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A MEMOIR

OF

THOMAS CHITTENDEN,

THE FIRST GOVERNOR OF VERMONT;

WITH A HISTORY OF THE CONSTITUTION DURING HIS ADMINISTRATION.

BY DANIEL CHIPMAN, LL. D.

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CONTENTS.

Page.

Preface,..... v.

CHAPTER I.

His Birth.—His Settlement in Salisbury.--The Governors of New York and New Hampshire both make grants of lands in the territory now included in the State of Vermont.--Col. Chittenden removes to the New Hampshire Grants.—Driven from his farm in 1676..... 9

CHAPTER II.

The first Constitution of Vermont,—a copy of the first Constitution of Pennsylvania, with some alterations and additions..... 26

CHAPTER III.

Congress recommends to the several States to form governments for themselves.—Formation of the first Constitutions of New Hampshire and Pennsylvania.—The first Constitutions of the different States varied as their Colonial Governments had varied.—Extracts from the charter of Gov. Penn.—History of the first Constitution of Pennsylvania and the formation of a new Constitution..... 51

CHAPTER IV.

The first section in the Bill of Rights in the Constitution of Pennsylvania so amended as to abolish slavery.—Act to prevent the transportation of negroes and mulattoes out of the State.—Second section in the Bill of Rights amended.—Ministerial acts.—Fifteenth section amended..... 81

CHAPTER V.

Ratification of the first Constitution of Vermont.—Acts of the Legislature making the Constitution a law of the State.—Extracts from Vt. State Papers.—Address of the Council of Safety to the people..... 98

CHAPTER VI.

The last section of the Constitution, providing for a Council of Censors, originated in a want of confidence in the Government which they had instituted.—Expensive mode of amending the Constitution.—Mode of amending the Constitution in Kentucky and Missouri. Extract from Chipman's Principles of Government... 114

CHAPTER VII.

Little regard paid to the Constitution in the first Septenary.—Address of the Council of Censors to the people, at the close of their deliberations..... 142

CHAPTER VIII.

Amendment of the 4th section in the Bill of Rights, and of the 16th section in the Frame of Government.—The Assembly denied the right of the Council to originate bills.—They pass suspended bills without sending them to the Governor and Council.—Vermont acceded to the Union.—Council of Censors elected at the end of the second Septenary.—They proposed amendments and called a Convention.—Resignation and death of Gov. Chittenden..... 171

CHAPTER IX.

Origin of Civil Government.—The powers of Government necessarily vested in individuals, until the people are capable of Self-Government.—The people of the British American Colonies organized the first Civil Government founded on the sovereignty of the people, the natural government of civilized man, and it will be extended through the world..... 194

APPENDIX.

NO. I.

Note to Page 118..... 207

NO. II.

Letter of Gov. Chittenden to Gen. Washington 208

NO. III.

Representation in the several States..... 215

PREFACE.

THE biography of Governor Chittenden is not so full as the reader may have expected to find it; but he will consider that his occupation was that of a farmer, and that although he was an enterprising, industrious, economical, and, of course, a successful and wealthy farmer, yet as agriculture had not during his life been raised to the rank of a science, or attracted any public attention, his occupation could afford but little matter for biography. Had he lived in these days of agricultural improvement, he would have been conspicuous among those individuals, who have devoted their time and their talents to the improvement of agriculture, and would have furnished much useful and interesting matter for history and biography.

His government, too, being rather patriarchal than constitutional, afforded little matter for an extended biography. In portraying his public character, therefore, I have been compelled to rely principally on the difficult task he had to perform, in organizing and administering the government, and the manner in which he performed it; stating, as far as recollection and the traditionary account of those times would enable me to do it, the peculiar traits of his character, which fitted him to perform it so well.

Until after the work was copied for the press, the charge of criminality against Gov. Chittenden and his compatriots, in their secret negotiation with the British authorities in Cana-

da, escaped my notice. This was natural, as I knew the charge to be unfounded. When I wrote the life of Judge Chipman, I noticed the charge, making a concise statement of the facts in the case, but afterwards finding that Col. Stone had, in his life of Brant, made the charge at length, with a detail of the evidence in support of it, I felt it to be my duty to insert a refutation of the charge, which occupied a number of pages. I cannot think of swelling this work by inserting that refutation, but I insert in the Appendix a letter from Gov. Chittenden to Gen. Washington, by which the reader will be satisfied that Gov. Chittenden kept Washington informed of that negotiation during its progress.

Ripton, Vt., December 17, 1849.

MEMOIR OF CHITTENDEN, &C.

CHAPTER I.

His Birth—His Settlement in Salisbury—The Governors of New York and New Hampshire both make grants of lands in the territory now included in the State of Vermont—Col. Chittenden removes to the New Hampshire Grants—Driven from his farm in 1776.

THOMAS CHITTENDEN was born in East Guilford, in the then Colony of Connecticut, on the 6th of January, 1730. Of his ancestors, nothing is known, except that his parents were respectable, but moved in the ordinary walks of life. His father was a farmer, and the subject of this memoir labored on the farm, being allowed only the advantages of a common school education.

In the 18th year of his age, being too full of enterprise and resolution to be confined within the narrow circle within which he seemed to be destined by his education and fortune to move, he engaged in a voyage to the West Indies. In this

enterprise, he was unfortunate. The mother country being at war with France, he was captured by a French vessel of war, and landed on a West India island, without money, and without friends. In this condition, he was left to find his way home, which, after a series of suffering and fatigue, he accomplished. After this unfortunate voyage, a sailor's life had no charms for him, and he determined "never again to leave his plough, to go ploughing on the deep." He accordingly continued on the farm with his father, until the 4th of October, 1749. About this time, he married Elizabeth Meigs, and soon after removed to Salisbury, in Connecticut. He thus made a Yankee settlement, married early, and began to move. The first settlement in the town, by the English, commenced about the year 1738, and the town was organized in November, 1741. This northwestern part of Connecticut, watered by the Housatonic river, and lying west of the Green Mountain range, remained a wilderness many years after the other parts of the colony had been settled. A fear of the Indians had prevented a settlement in this quarter, until the population in the older parts of the Colony had become somewhat crowded, and notwithstanding it was considered

a perilous undertaking to move a family into the remote wilderness of Salisbury, yet, there were in the older settlements so many men of enterprise and resolution, anxiously seeking a wider range for their exertions, that the town settled rapidly. And as the inhabitants displayed all that energy peculiar to new settlers, retaining their Puritan habits of economy, they soon became independent farmers. Coming as they did from different parts of New England, where customs and habits of thinking somewhat different had prevailed, and uniting in the formation of a new society out of these different materials, their minds were invigorated, and they naturally obtained a more enlarged and just view of men and things.

During the first half century, there were but few men of public education in the town, but there were a number of self-made, well-educated men, who were distinguished as public men in the county and in the Colony.

Judge Church, in his address delivered at the centennial anniversary of the organization of the town, in November, 1841, remarks: "It is a just occasion of pride in any community, that it has sent forth from its members to other regions

men of eminence and usefulness, and perhaps the town of Salisbury, retired and obscured as it is, has furnished other sections of the confederacy her full proportion of distinguished men." And in designating the individuals of this class, with great propriety, he places Thomas Chittenenden at the head of the list. That the inhabitants of the town placed him among their first citizens, is evident from the fact, that he represented the town in the Legislature, in the years 1765, '66, '67, '68, '69 and '72. He was also Colonel of a regiment of militia, and a Justice of the Peace, until he removed from the town. This last was, at that time, an office of distinction, for, during the whole century, after the organization of the town, thirty-five individuals only were in the commission of the peace.

The French province of Canada having been ceded to Great Britian by the treaty of 1763, all danger from the Indians was removed, and the New Hampshire Grants were open for settlement. The Governor of New Hampshire, claiming jurisdiction as far west as the present west line of Vermont, granted a great number of townships west of Connecticut river. Col. Chittenden and some of his sons were grantees in several of

these townships. The Governor of New York claimed jurisdiction over the same territory, and granted a considerable portion of the same lands, treating the New Hampshire grants as utterly void.

The grantees under New Hampshire made settlements in many of the townships, on both sides of the Green Mountains. In the year 1764, the King decided the controversy between the two Governors, so far as to give jurisdiction of the territory in question to New York.

By this decision, the Governor of New York considered that the grants which had been made by the Governor of New Hampshire were null and void, and he required the grantees under New Hampshire to surrender their charters, and take Confirmation charters under New York, on payment of granting fees, to a large amount.

With this requisition the settlers on the east side of the Mountain generally complied; paid the granting fees; took out Confirmation charters; and were quieted in their possessions; but the settlers on the west side of the Mountain called a convention, by which it was made penal for any one to take a Confirmation charter under New York. Actions of ejectment were brought against

the New Hampshire settlers by the grantees under New York, before the Courts at Albany, in which judgments were rendered in favor of the plaintiffs, who took out writs of possession, and attempted to execute them; but in every instance, the settlers made forcible and successful resistance, and remained in possession of their farms.

This state of things continuing, the settlements under New Hampshire, on the west side of the Mountain, rapidly increased, and the settlements under the Confirmation charters, on the east side of the Mountain, increased as rapidly. Great numbers emigrated from Salisbury to the New Hampshire Grants on the west side of the Mountain. They were perfectly prepared for another remove into a new country. They were in the prime of life; they had brought their farms into a high state of cultivation for those times; had acquired most of the conveniences which they desired; and seeing little room for the improvement of their condition, they felt a want of that peculiar excitement which had rendered them so happy in their new settlement, and a strong desire to live their lives over again, in another new settlement, on the New Hampshire Grants.

Col. Chittenden, having procured all the con-

veniences of life, and having no taste for luxuries, became, with his neighbors, dissatisfied with his condition, and determined to remove to the New Hampshire Grants. Accordingly, he joined with his neighbor, Jonathan Spafford, in the purchase of a large tract of land in Williston, on Onion River, which they divided in such a manner as to make each a most valuable farm.

In the month of May, 1774, Col. Chittenden removed his family onto the land which he had purchased in Williston, without having prepared any shelter for them. But, by his native energy, his untiring industry, and ample means, he soon placed them in a comfortable situation, and rapidly cleared his rich alluvial land, which produced Indian corn and other grain in such abundance, that, at the end of two years, he had an ample supply of provisions for his family, and a surplus for others, and nothing seemed wanting to yield him, in full measure, the peculiar happiness of a new settler. But, on the retreat of the American army from Canada, in the spring of 1776, by which the settlers on Onion River were exposed to the incursions of the enemy, his bright prospects of peace and happiness were suddenly changed. He was forced to "leave the reaping of

wheat for the reaping of foes,"—but his native energy did not forsake him for a moment. He, with two of his neighbors, immediately repaired to Philadelphia, to ascertain what were the designs of Congress in relation to the defence of the Northern frontier. The result was, that Congress could provide no protection for the inhabitants in that quarter, and hard as it was for him to leave his farm, which was so dear to him, yet, the idea never entered his mind to submit to the enemy to save his property, but he at once prepared to remove to the south part of the Grants. The whole family, including women and children, went on foot, by marked trees, through Middlebury to Castleton, their provisions and clothing being carried on two horses. They arrived safely at Castleton, and proceeded thence to Danby, where Col. Chittenden purchased or rented a farm, in the south part of the town, near the foot of the Mountain. He resided on this farm until Ticonderoga was evacuated, in July, 1777, when he removed to Pownal, where he resided at the time of Bennington battle. Soon after this, he removed to Williamstown, Mass.

The Council of Safety, of which Col. Chittenden was President, held a perpetual session in Benning-

ton, from about the middle of July until after the capture of Burgoyne, when he purchased a farm in Arlington, on which he resided until 1787.

It has been justly remarked that, in every important crisis in human affairs, Providence raises up men peculiarly fitted for the exigences of the times. This is strikingly verified in the early history of Vermont. When a people are assailed, and compelled to take arms in defence of their rights, the public and individual interest become identical. Thus, when New York claimed not only jurisdiction over the New Hampshire Grants, but the right of soil—the farms on which the settlers lived—the whole people united, and selected their most able and efficient men for their leaders, Ethan Allen, Seth Warner, and Remember Baker, for their military leaders, and Samuel Robinson, Jonas Fay, and others, to act in concert with them, and they were successful, as a brave and united people ever are, in defence of their rightful possessions. Mankind have ever considered their domicils, their firesides, as sacred, and worthy the protection of the gods, hence the Penates, the household gods of the ancients.

When the Green Mountain Boys had achieved

their independence, they had a far more difficult task to perform. It was necessary for the people to establish civil government, and become submissive to the laws. This was considered at the time, by all intelligent men, as a difficult and hazardous undertaking. The people had, for so long a time, successfully resisted the authority of New York, the only authority attempted to be exercised over them, that they had, in some measure, lost their Puritan habits of submission to lawful authority, and respect for the magistrates.

In this state of things, to form a constitution adapted to the situation, temper, and habits of the people, and to establish a code of laws, shackling them with no more regulations than they would bear, and at the same time calculated to bring them into a habit of submission to lawful authority, required for a leader, not only a wise patriot, but a man having a peculiar tact in exerting an influence on the minds of men, and inducing them to follow his lead.

At this critical period of our affairs, Col. Chittenden, who, as we have seen, came into the Grants a short time before, just in season to become generally known, was at once selected as a leader in all civil affairs. He was a member of

the convention holden at Dorset in September, 1776, for the purpose of taking into consideration the expediency of declaring Vermont an independent State. And at a subsequent meeting of the convention, at Westminster, he was a member of the committee who drafted the declaration of independence, and also a member of the committee appointed to petition Congress to acknowledge the independence of the State. He was also a leading member of the convention holden at Windsor, on the 2d of July, 1777, which formed the first Constitution of Vermont; and, as we have seen, he was President of the Council of Safety, which was vested with all the powers of Government—executive, legislative and judicial—to be exercised until the government should be organized under the Constitution. Those who personally knew Col. Chittenden perceive that he was the master spirit in that body. His sagacity, humanity, and sound discretion, are conspicuous especially in the disposition of the Tories, their estates, and their families.

He was elected the first Governor, and was continued in that office, with the exception of one year, until 1797. During the whole course of his public life in Vermont, it appeared that he

had been formed, by nature, and by education, purposely for the different stations in which he was placed.

He seldom took one step in reasoning on any subject, but his perceptions were so keen, and his mind so comprehensive, that he took a clear and full view of any subject, however complex, and made a correct decision, intuitively. Ethan Allen, who published a book entitled "Reason the only oracle of Man", and who subjected everything to the test of his own reasoning, both in the visible and invisible world, used to say of Governor Chittenden, that he was the only man he ever knew, who was sure to be right in all even the most difficult and complex cases, and yet could not tell or seem to know why he was so. Governor Chittenden being thus entirely practical, pursuing a course dictated by a clear view of the existing state of things, was never misled by any theories in the science of government and law adapted to a people differing in every way from the Green Mountain Boys. Hence he devised the quieting act, an act to secure the settlers in their possessions, and supported the tender acts, judging correctly, that they were absolutely necessary to prevent the dissolution of government. He

had a peculiar tact in discovering the disposition of those with whom he conversed, by which he acquired an influence that enabled him to carry into effect any measures which he proposed.

Gentlemen from the other states who transacted business with him, expressed their astonishment that he was able to penetrate their designs, and obtain as clear a knowledge of them as they had themselves. One gentleman remarked that he was enabled to do this by his familiar, rapid, and apparently unpremeditated conversation, by which they were thrown off their guard. Gov. Chittenden, observing that the people, from their peculiar situation, had imbibed a high degree of personal independence, and that each individual considered that his own opinion was deserving of great weight in all public affairs, seldom attempted to induce any one to support any proposed measure by giving his own opinion, and supporting it by arguments, but by asking advice, and putting questions so adroitly as to elicit the desired answer. And thus each individual with whom he conversed had the vanity to believe that the Governor was following his advice, that his opinion had prevailed, and he would support it with great earnestness.

Seldom has any man in public life acquired so

commanding an influence, and no one ever exerted his influence as he did without impairing it; indeed he exerted his influence on certain occasions, in such a manner as no other man could have done, without putting an end to his influence at once.

When presiding as chairman in a joint meeting of the two Houses, for the appointment of county officers, he would oppose the appointment of any one nominated, if he considered him unfit for the office. He, of course, occasionally gave offence, and excited angry feelings against him, but he had a peculiar faculty to allay those feelings. The following is an instance of this. He and General Spafford had ever been attached friends, and Spafford, being a Representative from the town of Williston, procured in the county convention a nomination of Daniel Stannard, of Jericho, for Justice of the Peace. Governor Chittenden very strenuously opposed his appointment, but his influence failed him on this occasion, and Stannard received the appointment. Governor Chittenden knowing that Spafford was strongly attached to Stannard, who was his brother-in-law, and fearing that he had offended Spafford by opposing this appointment, took the first opportunity to speak with

Spafford, and said: "Well, you have appointed Stannard a Justice of the Peace, after all." "Yes," said Spafford, "and I think we have done right." "Well, well," says the Governor, "I don't know but you have—he is a strange creature. I really believe he will make a better Justice of the Peace than I think he will." So in all cases where he had given offence and made an enemy, he never treated him as an enemy, seeking revenge, and obtaining what is falsely called satisfaction, but he treated him with the same familiarity and kindness as before.

His own kind feelings and good sense had taught him that the beneficent Creator has so constituted man that he is not necessarily rendered unhappy because others have become his enemies; that if he were thus exposed, his happiness would not depend on himself, or his own good disposition and virtuous course of life, but on the good pleasure, or rather, ill-nature of others; that if any one becomes an enemy to others, actuated by a spirit of revenge instead of kindness, he is necessarily unhappy; and that, therefore, to cherish feelings of kindness to all, doing good to those who hate us, is acting agreeably to the laws of nature.

Governed by these Christian principles, and

actuated by a disposition, naturally benevolent and kind, seeking the welfare of all, no wonder that he acquired a great and enduring popularity.

His situation, too, at the head of the new government, which required constant nursing, produced in him a strong attachment to it, and excited him to constant exertions for its support, for he knew that if the government should be overthrown, he should become a Governor Dorr.

From this view of his character and situation, we are able to account for the strong attachment of the people to Governor Chittenden, and for the singular fact, that when, in the year 1786, a portion of the people rose in arms to overthrow the government which they had instituted, they all looked upon Governor Chittenden as their peculiar friend, which enabled him to steer the vessel of state through the storm.

I cannot but hope that I shall meet with the approbation of the reader, if I devote no further portion of the work exclusively to portraying the character of Gov. Chittenden. What has been said will render the following history of the Constitution more clear, and more interesting, and that history in which he will so often appear as

the principal actor will give the reader a more full knowledge of his character.

The biography of Gov. Chittenden should have been written by one of his cotemporaries, who acted with him during his administration, and intimately knew all the traits of his mind and character, and who could have given many personal anecdotes, so interesting in biography, and so important in portraying his character.

Perhaps Gov. Chittenden would not have been so distinguished in the administration of a government which had been long established. No man was ever blessed with such a versatility of talent as to be equally useful in any station. But we always think more highly of a man who has constructed a complicated machine, set it in motion by a propelling power of precisely that force which the machine would bear, and put it in successful operation, than we do of an operative who has been taught to tend a machine which has been long in use.

CHAPTER II.

The first Constitution of Vermont—A copy of the first Constitution of Pennsylvania, with some alterations and additions.

It has been seen that the first Constitution of Vermont was framed by a convention holden at Windsor, on the 2d day of July, 1777. The convention had gone through with the constitution, section by section, when the unexpected and startling intelligence was received of the evacuation of Ticonderoga. The attention of all was instantly turned to the security of their families, and the convention broke up without making any provision for printing the Constitution. From this time, the attention of all was diverted from the Constitution to the defence of the country, until after the capture of Burgoyne. In December following, the convention met, revised the Constitution, and made preparation for organizing the government in March, 1778.

At that time, it was generally known that the first Constitution of Vermont was, in substance, a copy of the first Constitution of Pennsylvania, but this fact seems to have escaped the notice of

historians. The address of Dr. Young, of Philadelphia, to the people of Vermont, has been preserved, in which is the following:—"I have recommended to your committee the Constitution of Pennsylvania, as a model, which, with a very little alteration, will, in my opinion, come as near perfection as any thing yet concocted by mankind. This Constitution has been sifted with all the criticism that a band of despots was master of, and has bid defiance to their united powers." No wonder there were some political enthusiasts in those piping times, and no wonder that the people of Vermont preferred the Constitution of Pennsylvania to any other, for it was supposed to be the work of Franklin.

As the Constitution of Vermont contained in Thompson's History is not the first Constitution of 1778, nor the Constitution as amended in 1786, but the Constitution as amended in 1793, and as it is believed that our first Constitution is no where to be found, except in the Vermont State Papers, I have thought the reader would be pleased to have it inserted in this work. And that he may see at a glance, how far it is a copy of the first Constitution of Pennsylvania, the additions to the latter, and the alterations in it, made in framing

the Constitution of Vermont, are enclosed in brackets.

CHAPTER I.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT.

I. That all men are born equally free and independent, and have certain natural, inherent and unalienable rights, amongst which are the enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety. [Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any person, as a servant, slave, or apprentice, after he arrives to the age of twenty-one years, nor female, in like manner, after she arrives to the age of eighteen years, unless they are bound by their own consent, after they arrive to such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.

II. That private property ought to be subservient to public uses, when necessity requires it; nevertheless, whenever any particular man's property is taken for the use of the public, the owner ought to receive an equivalent in money.]

III. That all men have a natural and unalienable right to worship Almighty God, according to the dictates of their own consciences and understanding, regulated by the word of God; and that

no man ought, or of right can be compelled to attend any religious worship, or erect, or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; [nor can any man who professes the protestant religion] be justly deprived or abridged of any civil right, as a citizen, on account of his religious sentiment, or peculiar mode of religious worship, and that no authority can, or ought to be vested in, or assumed by, any power whatsoever, that shall, in any case, interfere with, or in any manner control, the rights of conscience, in the free exercise of religious worship; [nevertheless, every sect or denomination of people ought to observe the Sabbath, or the Lord's day, and keep up, and support some sort of religious worship, which to them shall seem most agreeable to the revealed will of GOD.

IV. That the people of this State have the sole, exclusive, and inherent right of governing and regulating the internal police of the same.]

V. That all power being originally inherent in, and consequently derived from, the people; therefore, all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them.

VI. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation or community; and not for the particular emolument or advantage of any single man, family or set of men, who are a part only of that community; and that the community hath an indubitable, unalienable and indefeasible right to reform, alter, or abolish gov-

ernment, in such manner as shall be, by that community, judged most conducive to the public weal.

VII. That those who are employed in the legislative and executive business of the State, may be restrained from oppression, the people have a right, at such periods as they may think proper, to reduce their public officers to a private station, and supply the vacancies by certain and regular elections.

VIII. That all elections ought to be free; and that all freemen, having a sufficient, evident common interest with, and attachment to, the community, have a right to elect officers, or be elected into office.

IX. That every member of society hath a right to be protected in the enjoyment of life, liberty and property, and therefore, is bound to contribute his proportion towards the expense of that protection, and yield his personal service, when necessary, or an equivalent thereto; but no part of a man's property can be justly taken from him, or applied to public uses, without his own consent, or that of his legal representatives; nor can any man who is conscientiously scrupulous of bearing arms, be justly compelled thereto, if he will pay such equivalent; nor are the people bound by any law, but such as they have, in like manner, assented to, for their common good.

X. That, in all prosecutions for criminal offences, a man hath a right to be heard, by himself and his counsel—to demand the cause and nature of his accusation—to be confronted with the witnesses—to call for evidence in his favor, and a

speedy public trial, by an impartial jury of the country; without the unanimous consent of which jury, he cannot be found guilty; nor can he be compelled to give evidence against himself; nor can any man be justly deprived of his liberty, except by the laws of the land or the judgment of his peers.

XI. That the people have a right to hold themselves, their houses, papers and possessions free from search or seizure; and therefore warrants, without oaths or affirmations first made, affording a sufficient foundation for them, and whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his, her or their property, not particularly described, are contrary to that right, and ought not to be granted.

[XII. That no warrant or writ to attach the person or estate, of any freeholder within this State, shall be issued in civil action, without the person or persons, who may request such warrant or attachment first make oath, or affirm, before the authority who may be requested to issue the same, that he, or they, are in danger of losing his, her or their debts.]

XIII. That, in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury; which ought to be held sacred.

XIV. That the people have a right to freedom of speech, and of writing and publishing their sentiments; therefore, the freedom of the press ought not to be restrained.

XV. That the people have a right to bear arms for the defence of themselves and the State; and, as standing armies, in the time of peace, are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by the civil power.

XVI. That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free. The people ought, therefore, to pay particular attention to these points, in the choice of officers and representatives, and have a right to exact a due and constant regard to them, from their legislators and magistrates, in the making and executing such laws as are necessary for the good government of the State.

XVII. That all people have a natural and inherent right to emigrate from one State to another, that will receive them; or to form a new State in vacant countries, or in such countries as they can purchase, whenever they think that thereby they can promote their own happiness.

XVIII. That the people have a right to assemble together, to consult for their common good—to instruct their representatives, and to apply to the legislature for redress of grievances, by address, petition or remonstrance.

[XIX. That no person shall be liable to be transported out of this State for trial, for any offence committed within this State.]

CHAPTER II.

PLAN OR FRAME OF GOVERNMENT.

SECTION I.

THE COMMONWEALTH or STATE OF VERMONT shall be governed, hereafter, by a Governor, Deputy Governor, Council, and an Assembly of the Representatives of the Freemen of the same, in manner and form following.

SECTION II.

The supreme Legislative power shall be vested in a House of Representatives of the Freemen or Commonwealth or State of *Vermont*.

SECTION III.

The supreme executive power shall be vested in a Governor and Council.

SECTION IV.

Courts of justice shall be established in every county in this State.

SECTION V.

The freemen of this Commonwealth, and their sons shall be trained and armed for its defence, under such regulations, restrictions and exceptions, as the General Assembly shall, by law, direct; preserving always to the people, the right

of choosing their colonels of militia, and all commissioned officers under that rank, in such manner, and as often, as by the said laws shall be directed.

SECTION VI.

Every man of the full age of twenty-one years, having resided in the State for the space of one whole year, next before the election of representatives, [and who is of a quiet and peaceable behaviour, and will take the following oath (or affirmation) shall be entitled to all the privileges of a freeman of this State.

I ——— ——— solemnly swear, by the ever living God, (or affirm, in the presence of Almighty God,) that whenever I am called to give my vote or suffrage, touching any matter that concerns the State of Vermont, I will do it so, as in my conscience, I shall judge will most conduce to the best good of the same, as established by the constitution, without fear or favor of any man.]

SECTION VII.

The House of Representatives of the Freemen of this State, shall consist of persons most noted for wisdom and virtue, to be chosen by the freemen of every town in this State, respectively. And no foreigner shall be chosen, unless he has resided in the town for which he shall be elected, one year immediately before said election.

SECTION VIII.

The members of the House of Representatives shall be chosen annually, by ballot, by the freemen of this State, on the first Tuesday of September, forever, (except this present year,) and shall meet on the second Thursday of the succeeding October, and shall be styled the General Assembly of the Representatives of the Freemen of *Vermont;* and shall have the power to choose their Speaker, Secretary of the State, their Clerk, and other necessary officers of the house—sit on their own adjournments—prepare bills and enact them into laws—judge of the elections and qualifications of their own members—they may expel a member, but not a second time for the same cause—they may administer oaths (or affirmations) on examination of witnesses—redress grievances—impeach State criminals—grant charters of incorporation—constitute towns, boroughs, cities and counties, and shall have all other powers necessary for the legislature of a free State : but they shall have no power to add to, alter, abolish, or infringe, any part of this constitution. And for this present year, the members of the General Assembly shall be chosen on the first Tuesday of March next, and shall meet at the meeting house, in *Windsor*, on the second Thursday of March next.

SECTION IX.

A quorum of the house of representatives shall consist of two thirds of the whole number of members elected ; and having met and chosen their

speaker, shall, each of them, before they proceed to business, take and subscribe, as well the oath of fidelity and allegiance herein after directed, as the following oath or affirmation, viz.

I —— —— do solemnly swear, by the ever living God, (or, I do solemnly affirm in the presence of Almighty God,)that as a member of this assembly, I will not propose or assent to any bill, vote, or resolution, which shall appear injurious to the people ; nor do or consent to any act or thing whatever, that shall have a tendency to lessen or abridge their rights and privileges, as declared in the Constitution of this State ; but will, in all things, conduct myself as a faithful, honest representative and guardian of the people, according to the best of my judgment and abilities.

And each member, before he takes his seat, shall make and subscribe the following declaration, viz :

I do believe in one God, the Creator and Governor of the Universe, the rewarder of the good and the punisher of the wicked. And I do acknowledge the scriptures of the old and new testament to be given by divine inspiration, [and own and profess the protestant religion.]

And no further or other religious test shall ever, hereafter, be required of any civil officer or magistrate in this State.

SECTION X.

Delegates to represent this State in Congress shall be chosen, by ballot, by the future General Assembly, at their first meeting, and annually,

forever afterward, as long as such representation shall be necessary. Any Delegate may be superseded, at any time, by the General Assembly appointing another in his stead. No man shall sit in Congress longer than two years successively, nor be capable of re-election for three years afterwards; and no person who holds any office in the gift of the Congress, shall, thereafter, be elected to represent this State, in Congress.

SECTION XI.

If any town or towns shall neglect or refuse to elect and send representatives to the General Assembly, two thirds of the members of the towns, that do elect and send representatives, (provided they be a majority of the inhabited towns of the whole State,) when met, shall have all the powers of the General Assembly, as fully and amply, as if the whole were present.

SECTION XII.

The doors of the house in which the representatives of the freemen of this State shall sit, in General Assembly, shall be and remain open for the admission of all persons, who behave decently, except only, when the welfare of this State may require the doors to be shut.

SECTION XIII.

The votes and proceedings of the General Assembly shall be printed, weekly, during their sitting, with the yeas and nays, on any question, vote or resolution, where one third of the members require it; (except when the votes are taken by ballot;) and when the yeas and nays are

so taken, every member shall have a right to insert the reasons of his votes upon the minutes, if he desire it.

SECTION XIV.

To the end that laws, before they are enacted, may be more maturely considered, and the inconveniency of hasty determination as much as possible prevented, all bills of a public nature, [shall first be laid before the Governor and Council, for their perusal and proposals of amendment, and shall be printed for the consideration of the people, before they are read in General Assembly, for the last time of debate and amendment; except temporary acts, which, after being laid before the Governor and Council, may (in case of sudden necessity) be passed into laws;] and no other shall be passed into laws, until the next session of assembly. And for the more perfect satisfaction of the public, the reasons and motives for making such laws, shall be fully and clearly expressed and set forth in their preambles.

SECTION XV.

The style of the laws of this State shall be,—"Be it enacted, and it is hereby enacted, by the Representatives of the Freemen of the State of *Vermont*, in General Assembly met, and by the authority of the same."

SECTION XVI.

In order that the Freemen of this State might enjoy the benefit of election, as equally as may be, each town in this State, that consists, or may

consist, of eighty taxable inhabitants, within one septenary or seven years, next after the establishing this constitution, may hold elections therein, and choose, each, two representatives; and each other inhabited town in this State may, in like manner, choose, each, one representative, to represent them in General Assembly, during the septenary or seven years; and after that, each inhabited town may, in like manner, hold such election, and choose, each, one representative, forever thereafter.

SECTION XVII.

The Supreme Executive Council of this State shall consist of a Governor, Lieutenant-Governor, and twelve persons, chosen in the following manner, viz. The Freemen of each town, shall, on the day of election for choosing representatives to attend the General Assembly, bring in their votes for Governor, with his name fairly written, to the constable, who shall seal them up and write on them, votes for the Governor, and deliver them to the representative chosen to attend the General Assembly; and, at the opening of the General Assembly, there shall be a committee appointed out of the Council, and Assembly, who, after being duly sworn to the faithful discharge of their trust, shall proceed to receive, sort, and count, the votes for the Governor, and declare the person who has the major part of the votes, to be Governor, for the year ensuing. And if there be no choice made, then the Council and General

Assembly, by their joint ballot, shall make choice of a Governor.

The Lieutenant Governor and Treasurer shall be chosen in the manner above directed; and each freeman shall give in twelve votes for twelve councillors, in the same manner; and the twelve highest in nomination shall serve for the ensuing year as Councillors.

The Council* that shall act in the recess of this Convention, shall supply the place of a Council for the next General Assembly, until the new Council be declared chosen. The Council shall meet annually, at the same time and place with the General Assembly; and every member of the Council shall be a Justice of the Peace for the whole State, by virtue of his office.

SECTION XVIII.

The Governor, and in his absence, the Lieutenant or Deputy Governor, with the Council—seven of whom shall be a quorum—shall have power to appoint and commissionate all officers, (except those who are appointed by the General Assembly,) agreeable to this frame of government, and the laws that may be made hereafter; and shall supply every vacancy in any office, occasioned by death, resignation, removal or disqualification, until the office can be filled, in the time and manner directed by law orthis constitution. They are to correspond with other States, and transact business with officers of government, civil and military; and to prepare such business as may appear to them necessary to lay before the General Assembly.

*The Council of Safety is here alluded to.

They shall sit as judges to hear and determine on impeachments, taking to their assistance, for advice only, the justices of the supreme court; and shall have power to grant pardons, and remit fines, in all cases whatsoever, except cases of impeachment, and in cases of treason and murder—shall have power to grant reprieves, but not to pardon, until the end of the next session of the Assembly: but there shall be no remission or mitigation of punishment, on impeachments, except by act of legislation. They are also, to take care that the laws be faithfully executed. They are to expedite the execution of such measures as may be resolved upon by General Assembly; and they may draw upon the Treasurer for such sums as may be appropriated by the House: they may also lay embargoes, or prohibit the exportation of any commodity for any time, not exceeding thirty days, in the recess of the House only: they may grant such licenses as shall be directed by law, and shall have power to call together the General Assembly, when necessary, before the day to which they shall stand adjourned. The Governor shall be commander in chief of the forces of the State; but shall not command in person, except advised thereto by the Council, and then, only as long as they shall approve thereof. The Governor and Council shall have a Secretary, and keep fair books of their proceedings, wherein any Councillor may enter his dissent, with his reasons to support it.

SECTION XIX.

All commissions shall be in the name of the

freemen of the State of *Vermont*, sealed with the State seal, signed by the Governor, and in his absence, the Lieutenant Governor, and attested by the Secretary; which seal shall be kept by the Council.

SECTION XX.

Every officer of State, whether judicial or executive, shall be liable to be impeached by the General Assembly, either when in office, or after his resignation, or removal for mal-administration. All impeachments shall be before the Governor or Lieutenant Governor and Council, who shall hear and determine the same.

SECTION XXI.

The supreme court, and the several courts of common pleas of this State shall, besides the powers usually exercised by such courts, have the powers of a court of chancery, so far as relates to perpetuating testimony, obtaining evidence from places not within this State, and the care of persons and estates of those who are *non compotes mentis*, and such other powers as may be found necessary by future General Assemblies, not inconsistent with this constitution.

SECTION XXII.

Trials shall be by jury; and it is recommended to the legislature of this State to provide by law, against every corruption or partiality in the choice, and return, or appointment, of juries.

SECTION XXIII.

All courts shall be open, and justice shall be

impartially administered, without corruption or unnecessary delay; all their officers shall be paid an adequate, but moderate, compensation for their services; and if any officer shall take greater or other fees than the laws allow him, either directly or indirectly, it shall ever after disqualify him from holding any office in this State.

SECTION XXIV.

All prosecutions shall commence in the name and by the authority of the freemen of the State of *Vermont*, and all indictments shall conclude with these words, "against the peace and dignity of the same." The style of all process hereafter, in this State, shall be,—The State of *Vermont*.

SECTION XXV.

The person of a debtor, where there is a strong presumption of fraud, shall not be continued in prison, after delivering up, *bona fide*, all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law. All prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great.

SECTION XXVI.

Excessive bail shall not be exacted for bailable offences: and all fines shall be moderate.

SECTION XXVII.

That the General Assembly, when legally formed, shall appoint times and places for county elections, and at such times and places, the freemen

in each county respectively, shall have the liberty of choosing the judges of inferior court of common pleas, sheriff, justices of the peace, and judges of probate, commissioned by the Governor and Council, during good behavior, removable by the General Assembly upon proof of mal-administration.

SECTION XXVIII.

That no person shall be capable of holding any civil office, in this State, except he has acquired, and maintains a good moral character.

SECTION XXIX.

All elections, whether by the people or in General Assembly, shall be by ballot, free and voluntary: and any elector who shall receive any gift or reward for his vote, in meat, drink, monies or otherwise, shall forfeit his right to elect at that time and suffer such other penalty as future laws shall direct. And any person who shall, directly or indirectly, give, promise, or bestow, any such rewards to be elected, shall, thereby, be rendered incapable to serve for the ensuing year.

SECTION XXX.

All fines, licence money, fees and forfeitures, shall be paid, according to the direction hereafter to be made by the General Assembly.

SECTION XXXI.

All deeds and conveyances of land shall be recorded in the town clerk's office, in their respective towns.

SECTION XXXII.

The printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any part of government.

SECTION XXXIII.

As every freeman, to preserve his independence (if without a sufficient estate) ought to have some profession, calling, trade or farm, whereby he may honestly subsist, there can be no necessity for, nor use in, establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants; faction, contention, corruption and disorder among the people. But if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the legislature.

SECTION XXXIV.

The future legislature of this State, shall regulate entails, in such manner as to prevent perpetuities.

SECTION XXXV.

To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary; houses ought to be provi-

ded for punishing, by hard labor, those who shall be convicted of crimes not capital; wherein the criminal shall be employed for the benefit of the public, or for reparation of injuries done to private persons; and all persons, at proper times, shall be admitted to see the prisoners at their labor.

SECTION XXXVI.

Every officer, whether judicial, executive or military, in authority under this State, shall take the following oath or affirmation of allegiance, and general oath of office, before he enter on the execution of his office.

The Oath or Affirmation of Allegiance.

"I ——— ——— do solemnly swear by the ever living God, (or affirm in presence of Almighty God,) that I will be true and faithful to the State of Vermont; and that I will not, directly or indirectly, do any act or thing, prejudicial or injurious to the constitution or government thereof, as established by Convention."

The Oath or Affirmation of Office.

"I ——— ——— do solemnly swear by the ever living God, (or affirm in presence of Almighty God) that I will faithfully execute the office of —— for the —— of ——; and will do equal right and justice to all men, to the best of my judgment and abilities, according to law."

SECTION XXXVII.

No public tax, custom or contribution shall be imposed upon, or paid by, the people of this State,

except by a law for that purpose; and before any law be made for raising it, the purpose for which any tax is to be raised ought to appear clear to the legislature to be of more service to the community than the money would be, if not collected; which being well observed, taxes can never be burthens.

SECTION XXXVIII.

Every foreigner of good character, who comes to settle in this State, having first taken an oath or affirmation of allegiance to the same, may purchase, or by other just means acquire, hold, and transfer, land or other real estate; and after one year's residence, shall be deemed a free denizen thereof, and entitled to all the rights of a natural born subject of this State; except that he shall not be capable of being elected a representative, until after two years residence.

SECTION XXXIX.

That the inhabitants of this State, shall have liberty to hunt and fowl, in seasonable times, on the lands they hold, and on other lands (not enclosed;) and, in like manner, to fish in all boatable and other waters, not private property, [under proper regulations, to be hereafter made and provided by the General Assembly.]

SECTION XL.

A school or schools shall be established in each town, by the legislature, for the convenient instruction of youth, with such salaries to the mas-

ters, paid by each town; making proper use of school lands in each town, thereby to enable them to instruct youth at low prices. One grammar school in each county, and one university in this State, ought to be established by the direction of the General Assembly.

SECTION XLI.

Laws for the encouragement of virtue and prevention of vice and immorality, shall be made and constantly kept in force; and provision shall be made for their due execution; and all religious societies or bodies of men, that have or may be hereafter united and incorporated, for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities and estates which they, in justice, ought to enjoy, under such regulations, as the General Assembly of this State shall direct.

SECTION XLII.

All field and staff officers, and commissioned officers of the army, and all general officers of the militia, shall be chosen by the General Assembly.

SECTION XLIII.

The declaration of rights is hereby declared to be a part of the Constitution of this State, and ought never to be violated, on any pretence whatsoever.

SECTION XLIV.

In order that the freedom of this Commonwealth

may be preserved inviolate, forever, there shall be chosen, by ballot, by the freemen of this State, on the last Wednesday in March, in the year one thousand seven hundred and eighty-five, and on the last Wednesday in March, in every seven years thereafter, thirteen persons, who shall be chosen in the same manner the council is chosen —except they shall not be chosen out of the Council or General Assembly—to be called the Council of Censors; who shall meet together, on the first Wednesday of June next ensuing their election; the majority of whom shall be a quorum in every case, except as to calling a Convention, in which two thirds of the whole number elected shall agree; and whose duty it shall be to enquire whether the constitution has been preserved inviolate, in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people; or assumed to themselves, or exercised, other or greater powers, than they are entitled to by the constitution. They are also to enquire whether the public taxes have been justly laid and collected, in all parts of this Commonwealth—in what manner the public monies have been disposed of, and whether the laws have been duly executed. For these purposes they shall have power to send for persons, papers and records: they shall have authority to pass public censures—to order impeachments, and to recommend to the legislature the repealing such laws as appear to them to have been enacted contrary to the principles of the constitution. These powers they shall continue to

have, for and during the space of one year from the day of their election, and no longer. The said Council of Censors shall also have the power to call a Convention, to meet within two years after their sitting, if there appears to them an absolute necessity of amending any article of this constitution which may be defective—explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people; but the articles to be amended, and the amendments proposed, and such articles as are proposed to be added or abolished, shall be promulgated at least six months before the day appointed for the election of such convention, for the previous consideration of the people, that they may have an opportunity of instructing their delegates on the subject.

CHAPTER III.

Congress recommends to the several States to form governments for themselves—Formation of the first Constitutions of New Hampshire and Pennsylvania—The first Constitutions of the different States, varied as their Colonial Governments had varied—Extracts from the charter of Gov. Penn—History of the first Constitution of Pennsylvania and the formation of a new Constitution.

Before we proceed to a protracted examination of the Constitution of Vermont, it cannot be out of place to refer briefly to the formation of Constitutions by the United American Colonies. When they had successfully resisted the authority of the British crown, and overthrown the colonial governments, all of them, except Connecticut and Rhode Island, who had under their charters elected all their public functionaries, were destitute of any organized civil governments, and Congress recommended to the different colonies to frame, each for itself, such form of civil government as the people should judge would be most conducive to their happiness. In pursuance of this resolution, the people of New Hampshire, on the 5th day of January, 1776, formed a Constitution of civil government. This was not only the first Constitution formed by any of the colonies, but the first writ-

ten Constitution of civil government formed by any people, unless the compact signed by our Pilgrim Fathers on board the May.Flower may be considered as a written Constitution of civil government.

The reader will be prepared to find this Constitution very defective. It was such as the colonial government under which they had lived induced them to form. Under their colonial charter, the Governor had been appointed by the crown, who had a negative upon all acts of the Legislature, and by the exercise of the veto power both he and his office had become so odious to the people that they could not endure a governor, although elected by themselves, and as they considered the Constitution which they were forming to be but temporary, to continue only until a reconciliation with the mother country should take place, they bestowed so little attention upon it that they provided no substitute for the Governor—they instituted no executive department.

But when the government was organized, it was found that Mesheck Weare, the President of the Council, was the highest officer in the government, and he acted as Executive during the revolutionary war. And yet, imperfect as the Constitution

was in other respects, the Legislature being divided into two co-ordinate branches, a House of Representatives and a Council, it carried them through the revolutionary war, and down to the year 1792, when a new Constitution was adopted, which has continued to this day without any amendment or attempt to amend it.

In every other State except Pennsylvania, the Legislature was divided by the Constitution or charter, and consisted of a House of Representatives and a Senate, or Council. In that State, as we have seen, supreme legislative power was vested in a House of Representatives.

The great body of the inhabitants of the colony of Pennsylvania, at the commencement of the revolutionary war, had been born and lived under their proprietary, Gov. Penn, enjoying such privileges as he had been pleased to grant them. It would be desirable to give the charter of Gov. Penn in full, establishing a frame of government, that the reader might judge for himself, what views the people of that colony entertained, and what habits of thinking in relation to government they had acquired, and what sort of government such a people would probably form for themselves, and thus be able to account for the formation and a-

doption of the first Constitution of Pennsylvania, so essentially different from the Constitutions of all the other States; and, I may add, so much more defective; but it would occupy too much space, and I will only give the following extracts from the charter of Gov. Penn.

THE FRAME OF THE GOVERNMENT OF THE PROVINCE OF PENNSYLVANIA, IN AMERICA.

TO all people, to whom these presents shall come. WHEREAS, King Charles the second, by his letters patents, under the great seal of *England*, for the consideration therein mentioned, hath been graciously pleased to give and grant unto me *William Penn* (by the name of *William Penn*, Esquire, son and heir of sir *William Penn* deceased) and to my heirs and assigns forever, all that tract of land, or province, called *Pennsylvania*, in *America*, with divers great powers, preeminences, royalties, jurisdictions, and authorities, necessary for the well-being and government thereof: Now know ye, that for the well-being and government of the said province, and for the encouragement of all the freemen and planters, that may be therein concerned, in pursuance of the powers aforementioned, I, the said William Penn, have declared, granted, and confirmed, and by these presents, for me, my heirs and assigns, do declare, grant, and confirm unto all the freemen, planters and adventurers of, in and to the said province, these liberties, franchises and prop-

erties, to be held, enjoyed and kept by the freemen, planters and inhabitants of the said province of *Pennsylvania* for ever.

Imprimis, That the government of this province shall, according to the powers of the patent, consist of the Governor and freemen of the said province, in form of a provincial council, and general assembly, by whom all laws shall be made, officers chosen, and public affairs transacted, as is hereafter respectively declared, that is to say—

II. That the freemen of the said province shall, on the twentieth day of the twelfth month, which shall be in this present year, one thousand six hundred eighty and two, meet and assemble in some fit place, of which timely notice shall be before hand given by the governor or his deputy; and then and there, shall choose out of themselves *seventy-two* persons of most note for their wisdom, virtue and ability, who shall meet, on the tenth day of the first month next ensuing, and always be called, and act as, the provincial council of the said province.

III. That at the first choice of such provincial council, one-third part of the said provincial council shall be chosen to serve for three years then next ensuing; one third part, for two years then next ensuing; and one-third part, for one year then next ensuing such election, and no longer; and that the said third part shall go out accordingly: and on the twentieth day of the twelfth month, as aforesaid, yearly for ever afterwards, the freemen of the said province shall, in like manner, meet and assemble together, and then

choose twenty-four persons, being one third of the said number, to serve in provincial council for three years; it being intended, that one-third part of the whole provincial council (always consisting, and to consist, of seventy-two persons as aforesaid) falling off yearly, it shall be yearly supplied, by such new yearly elections, as aforesaid; and that no one person shall continue therein longer than three years: and, in case any member shall decease before the last election during his time, that then at the next election ensuing his decease, another shall be chosen to supply his place, for the remaining time, he was to have served, and no longer.

IV. That, after the first seven years, every one of the said third parts, that goeth yearly off, shall be uncapable of being chosen again for one whole year following: that so all may be fitted for government, and have experience of the care and burden of it.

V. That the provincial council, in all cases and matters of moment, as their arguing upon bills to be passed into laws, erecting courts of justice, giving judgment upon criminals impeached, and choice of officers, in such manner as is hereinafter mentioned; not less than two-thirds of the whole provincial council shall make a *quorum;* and that the consent and approbation of two-thirds of such *quorum* shall be had in all such cases and matters of moment. And moreover that, in all cases and matters of lesser moment, twenty-four members of the said provincial council shall make a *quorum*, the majority of which twenty-four shall, and may,

always determine in such cases and causes of lesser moment.

VI. That in this provincial council, the governor, or his deputy, shall or may always preside, and have a treble voice ; and the said provincial council shall always continue, and sit upon its own adjournments and committees.

VII. That the governor and provincial council shall prepare and propose to the general assembly, hereafter mentioned, all bills, which they shall, at any time, think fit to be passed into laws, within the said province ; which bills shall be published and affixed to the most noted places, in the inhabited parts thereof, thirty days before the meeting of the general assembly, in order to the passing them into laws, or rejecting of them, as the general assembly shall see meet.

VIII. That the governor and provincial council shall take care, that all laws, statutes and ordinances, which shall at any time be made within the said province, be duly and diligently executed.

IX. That the governor and provincial council shall, at all times, have the care of the peace and safety of the province, and that nothing be by any person attempted to the subversion of this frame of government.

X. That the governor and provincial council shall, at all times, settle and order the situation of all cities, ports and market towns in every county, modelling therein all public buildings, streets and market places, and shall appoint all necessary roads, and highways in the province..

XI. That the governor and provincial council shall, at all times, have power to inspect the management of the public treasury, and punish those who shall convert any part thereof to any other use, than what hath been agreed upon by the governor, provincial council and general assembly.

XII. That the governor and provincial council shall erect and order all public schools, and encourage and reward the authors of useful sciences and laudable inventions in the said province.

XIII. That, for the better management of the powers and trust aforesaid, the provincial council shall, from time to time, divide itself into four distinct and proper committees, for the more easy administration of the affairs of the province, which divides the seventy-two into four eighteens, every one of which eighteen shall consist of six out of each of the three orders, or yearly elections, each of which shall have a distinct portion of business, as followeth: *First*, a committee of plantations, to situate and settle cities, ports and market towns, and highways, and to hear and decide all suits and controversies relating to plantations. *Secondly*, A committee of justice and safety, to secure the peace of the province, and punish the mal-administration of those who subvert justice, to the prejudice of the public, or private interest. *Thirdly*, A committee of trade and treasury, who shall regulate all trade and commerce, according to law, encourage manufacture and country growth, and defray the public charge of the province. And, *Fourthly*, A committee of manners, education and arts, that all wicked and scandalous liv-

ing may be prevented, and that youth may be successively trained up in virtue and useful knowledge and arts: the *quorum* of each of which committees being six, that is, two out of each of the three orders, or yearly elections, as aforesaid, make a constant and standing council of *twenty-four*, which will have the power of the provincial council, being the quorum of it, in all cases not excepted in the fifth article ; and in the said committees, and standing council of the province, the governor, or his deputy, shall or may preside, as aforesaid ; and in the absence of the governor, or his deputy, if no one is by either of them appointed, the said committees or council shall appoint a president for that time ; and what shall be resolved at such committees, shall be reported to the said council of the province, and shall be by them resolved and confirmed before the same shall be put in execution ; and that these respective committees shall not sit at one and the same time, except in cases of necessity.

XIV. And, to the end that all laws prepared by the governor and provincial council aforesaid, may yet have the more full concurrence of the freemen of the province, it is declared, granted and confirmed, that at the time and place or places, for the choice of a provincial council, as aforesaid, the said freemen shall yearly choose members to serve in a general assembly, as their representatives, not exceeding two hundred persons, who shall yearly meet, on the twentieth day of the second month, which shall be in the year one thousand six hundred eighty and three following, in

the capital town, or city, of the said province, where, during eight days, the several members may freely confer with one another; and if any of them see meet, with a committee of the provincial council (consisting of three out of each of the four committees aforesaid, being twelve in all) which shall be, at that time, purposely appointed to receive from any of them proposals, for the alterations or amendment of any of the said proposed and promulgated bills: and on the ninth day from their so meeting, the said general assembly, after reading over the proposed bills by the clerk of the provincial council, and the occasions and motives for them being opened by the governor or his deputy, shall give their affirmative or negative, which to them seemeth best, in such manner as herein after is expressed. But not less than two-thirds shall make a *quorum* in the passing of laws, and choice of such officers as are by them to be chosen.

XV. That the laws so prepared and proposed, as aforesaid, that are assented to by the general assembly, shall be enrolled as laws of the province, with this style: *By the governor, with the assent and approbation of the freemen in provincial council and general assembly.*

XVI. That for the establishment of the government and laws of this province, and to the end there may be an universal satisfaction in laying of the fundamentals thereof; the general assembly shall, or may for the first year, consist of all the freemen of and in the said province; and ever after it shall be yearly chosen, as aforesaid; which

number of two hundred shall be enlarged as the country shall increase in people, so as it do not exceed five hundred, at any time; the appointment and proportioning of which, as also the laying and methodizing of the choice of the provincial council and general assembly, in future times, most equally to the divisions of the hundreds and counties, which the country shall hereafter be divided into, shall be in the power of the provincial council to propose, and the general assembly to resolve.

XVII. That the governor and provincial council shall erect, from time to time, standing courts of justice, in such places and number as they shall judge convenient for the good government of the said province. And that the provincial council shall, on the thirteenth day of the first month, yearly, elect and present to the Governor, or his deputy, a double number of persons to serve for judges, treasurers, masters of rolls, within the said province, for the year next ensuing; and the freemen of the said province, in the county courts, when they shall be erected, and till then, in the general assembly, shall, on the three and twentieth day of the second month, yearly, elect and present to the governor, or his deputy, a double number of persons, to serve for sheriffs, justices of the peace, and coroners, for the year next ensuing; out of which respective elections and presentments, the governor or his deputy shall nominate and commissionate the proper number for each office, the third day after the said presentments, or else the first named in such presentment,

for each office, shall stand and serve for that office the year ensuing.

XVIII. But forasmuch as the present condition of the province requires some immediate settlement, and admits not of so quick a revolution of officers; and to the end the said province may, with all convenient speed, be well ordered and settled, I, *William Penn*, do therefore think fit to nominate and appoint such persons for judges, treasurers, masters of the rolls, sheriffs, justices of the peace, and coroners, as are most fitly qualified for those employments; to whom I shall make and grant commissions for the said offices, respectfully, to hold to them, to whom the same shall be granted, for so long time as every such person shall well behave himself in the office, or place to him respectively granted, and no longer. And upon the decease or displacing of any of the the said officers, the succeeding officer or officers shall be chosen as aforesaid.

XIX. That the general assembly shall continue so long as may be needful to impeach criminals, fit to be there impeached, to pass bills into laws, that they may think fit to pass into laws, and till such time as the governor and provincial council shall declare that they have nothing further to propose unto them, for their assent and approbation: and that declaration shall be a dismiss to the general assembly for that time; which general assembly shall be, notwithstanding, capable of assembling together upon the summons of the provincial council, at any time during that

year, if the said provincial council shall see occasion for their so assembling.

XX. That all the elections of members, or representatives of the people, to serve in provincial council and general assembly, and all questions to be determined by both, or either of them, that relate to passing of bills into laws, to the choice of officers, to impeachments by the general assembly, and judgment of criminals upon such impeachments by the provincial council, and to all other cases by them respectively judged of importance, shall be resolved and determined by the ballot; and unless on sudden and indispensable occasions, no business in provincial council, or its respective committees, shall be finally determined the same day that it is moved.

XXI. That, at all times, when, and so often as it shall happen that the governor shall, or may, be an infant, under the age of one and twenty years, and no guardians, or commissioners, are appointed, in writing, by the father of the said infant, or that such guardians or commissioners shall be deceased; that during such minority, the provincial council shall, from time to time, as they shall see meet, constitute and appoint guardians, or commissioners, not exceeding three; one of which three shall preside as deputy, and chief guardian, during such minority, and shall have and execute, with the consent of the other two, all the power of a governor, in all the public affairs and concerns of the said province.

XXII. That, as often as any day of the month mentioned in any article of this charter, shall fall

upon the first day of the week, commonly called the *Lord's Day*, the business of that day shall be deferred till the next day, unless in case of emergency.

XXIII. That no act, law, or ordinance whatsoever, shall at any time, hereafter, be made or done by the governor of this province, his heirs or assigns, to alter, change, or diminish the form or effect of this charter, or any part or clause thereof, or contrary to the true intent and meaning thereof, without the consent of the governor, his heirs or assigns, and six parts of seven of the said freeemen in provincial council and general assembly.

XXIV. And lastly, that I, the said *William Penn*, for myself, my heirs and assigns, have solemnly declared, granted and confirmed, and do hereby solemnly declare, grant and confirm, that neither I, nor my heirs nor assigns, shall procure or do any thing or things, whereby the liberties, in this charter contained and expressed, shall be infringed or broken; and if any thing be procured by any person or persons contrary to these premises, it shall be held of no force or effect. In witness whereof, I, the said *William Penn*, have unto this present charter of liberties set my hand and broad seal, this five and twentieth day of the second month, vulgarly called April, in the year of our Lord one thousand six hundred and eighty two.

WILLIAM PENN.

The people of Pennsylvania lived under this government from the year 1683 to the year 1776. Most of the inhabitants, at the latter period, were born under this government, and the mass of the people could not have had the least knowledge of any other government, and so sensibly did they feel the evils of their own, from the exorbitant power of the Governor, and the want of power in the General Assembly, composed of their own representatives, that they thought of nothing but the removal of these evils. Such is human nature. When we experience inconveniences in our present situation, we become men of one idea, and can think of nothing but a change of our condition, until we learn from better experience, that a change is not always an improvement. So it was with the people of Pennsylvania, in forming their first constitution. Like the people of New Hampshire, they had imbibed so strong a prejudice against the Governor imposed upon them by the Crown, that they could not think of a Governor elected by themselves, as an Executive Magistrate, but vested the whole executive power in an Executive Council, and vested supreme Legislative power in a House of Representatives, without any check upon it. Such is human nature every-

where. In France, the House of Peers had become so odious by the repeated refusal to concur with the Assembly in carrying out the wishes of the people, as expressed by their representatives, that they thought of nothing but the removal of this evil, and they vested the legislative power of the Republic in the Assembly, consisting of 900 members, without any other branch of the Legislature, to prevent them from passing such laws as the people desired.

The following provision in the charter of Governor Penn, the people had been pleased with :— "All bills which the Governor and Council shall prepare to lay before the Assembly, shall be posted up and published thirty days before the meeting of the Assembly." There was no inconvenience arising from this provision ; it caused no delay in legislation ; and the people were gratified to know what bills their representatives would be permitted to pass at the next session. This was the origin of the provision in the Constitution of Pennsylvania, and in the first Constitution of Vermont, "that all bills of a public nature shall be printed for the consideration of the people, and shall not be passed into laws before the next session of the Assembly." This provision produced

great inconvenience in both States, and was evaded by making all public acts temporary, to continue in force till the next session, and were reviewed from year to year.

There was a powerful opposition to this Constitution, at the time it was adopted, and an increasing dissatisfaction with it, during its continuance. In the year 1777, the next year after the Constitution was adopted, the Legislature passed a resolution, referring to the people the question whether a Convention should be called to amend it. In the year 1778, the Legislature passed a like resolution, but these resolutions were not carried into effect, and in the year 1779, they were rescinded, on the petition of more than thirteen thousand citizens.

At the end of the first septenary, a Council of Censors was elected, agreeably to the provisions of the Constitution. When the Council met, they appointed a Committee to enquire whether the Constitution had been preserved inviolate in every part, and whether the Executive and Legislative branches of the government had performed their duties as guardians of the people, &c. The committee reported that they found multiplied instances of a departure from the frame of govern-

ment, closing with the following: "At the third session of the present Assembly, a law was passed to vest in Isaac Austin a real estate in Philadelphia, claimed and possessed by George A. Baker, as his freehold." This extraordinary act of Assembly, moreover, commanded the Sheriff to put Mr. Austin in possession.

The Council also appointed a Committee, to report the articles of the Constitution which are defective and require amendment. This Committee reported an entire new frame of government. They divided the Legislature into two co-ordinate branches; provided for the election of a Governor by the people, in whom they vested the appointment and removal from office, and gave him a qualified negative upon all acts passed by the two Houses; the judges of the Supreme Court to hold their offices during good behavior; and they abolished the article providing for a Council of Censors, and provided no substitute.

The report was accepted by a vote of 12 to 9, but as a vote of two-thirds of the Council was required to call a convention, the people were deprived of the privilege of deciding the question, upon which the Council were divided. On the 21st of January, the Council, by a vote of 12 to

10, made the following address to the people, and adjourned to the first Tuesday of June following, hoping they should then be able to call a Convention.

ADDRESS.

Friends and fellow citizens,

Agreeably to the trust reposed in us, we have met and seriously deliberated upon those matters submitted to our consideration, by the constitution of this state.

The most weighty subject that has come before us, is the constitution itself. To that, therefore, whilst we have not neglected the others, we have principally directed our attention. We have examined it with candor; we have compared it with the constitutions of other states; we have discovered some of its defects; we have suggested the necessity of abolishing such parts of it as are expensive and burthensome, and dangerous to your liberties, and have with great deference thrown out, for your consideration, such alterations as appear to us to be best calculated to secure to you the blessings of free and equal government.

By the report of your committee which accompanies this address, you will perceive that though the majority of this council approve of the alterations, considering them essential to your existence as a free people, it has not yet met with the concurrence of two-thirds of our whole number,

which the constitution has made necessary to enable us to call a convention. We are strangers to the motives of the minority,for refusing to give you an opportunity to judge upon a matter, you and we, and all our posterity are so deeply interested in, while by their silence upon the subject of the report, they have confessed that the constitution wants amendment. By refusing to indulge you in a convention for that purpose, they hold up consequences from that meeting that are dishonorable to freemen. They have indeed had the power to prevent it for the present, in the manner pointed out by the constitution :—But their sullen *no* in this council cannot rob you of your birth-right.

Is it that they were concerned in the framing of the constitution, and therefore cannot bear that any fault should be found with it ? This fondness for the productions of the brain, is a weakness mankind is subject to. But in so momentous a concern, passion and prejudice should, as far as human nature is capable of it, be laid aside, and the arguments offered, weighed with that cool deliberation the subject deserves. Nor can it be in any case, much less in the intricate science of government, upon which so few have had either leisure or opportunity to turn their thoughts, an impeachment of any man's judgment, to say he is mistaken. If errors then have crept in, they ought to be corrected ; if there are ambiguities, they should be explained, and if the system itself is wrong it should be altered.

One cannot hesitate a moment in declaring that all these were naturally to be expected from the

time and circumstances under which the present constitution was formed. Our political knowledge was in its infancy. The passions of the state were unusually agitated. A large body of militia were busy in preparing to march to another state to oppose the progress of the British army. Another body of citizens to the amount of five thousand were absent, on the same service, in the continental army. Amidst the din of arms and the dread of invasion, and when many wise and able men were necessarily absent, whose advice and assistance would have been of great use, was it reasonable to expect that a constitution could be formed proper for a great and growing state? And if an improper one was formed, which is our decided opinion, shall it not be altered or amended?

Let it not be said, that the constitution has carried us triumphantly through a perilous war; this is far from being the case. We owe all the exertions of Pennsylvania to the virtue of the people. In times of danger, it is well known, the constitution forsook us, and the will of our rulers became the only law. It is well known, likewise, that a great part of the citizens of Pennsylvania, from a perfect conviction that political liberty could never long exist under such a frame of government, were opposed to the establishment of it, and that when they did submit to it, a solemn engagement was entered into by its then friends, that after seven years should be expired, and the enemy driven from our coasts, they would concur with them in making the wished for amendments. The seven years have elapsed, and our country

now enjoys a peace, favorable to the most temperate deliberations on the subject of government; but a minority in this council, which, by the absurdity of its constitution, can in this instance bind the majority, say it is unnecessary. We appeal to your common sense, whether such a conduct is calculated to restore order and mutual confidence. It may be proper here to remark, that this very minority, although near one half of the members present in this council, do not represent one third of you; so that the voice of more than two-thirds of the people, if the majority speak your sense, is sunk entirely; and, contrary to all principles, the lesser number binds the greater. What do these men fear from a convention? are they afraid to trust you with the exercise of the inestimable power of choosing a government for yourselves? You cannot, you will not injure yourselves in this business. If the constitution in its present form is most agreeable, you have only to instruct your representatives in the convention to adopt it in all its parts. You are the sovereigns of Pennsylvania. All the power of the state is derived from your votes. Nothing can be obligatory on you which is contrary to your inclinations, or repugnant to your happiness. We do not quote any part of the bill of rights to prove to you that you may call a convention, when and in what manner you please. This privilege is your birth-right and no power on earth can deprive you of it. We appeal to you, therefore, to decide the great question, whether Pennsylvania shall continue unhappy and distracted under her

present constitution, or whether by calling a convention, and amending it, you will restore harmony amongst yourselves and dignity to your Government.

We recommend to your serious consideration, the report of our committee, which has been adopted by this council and has become one of its acts. Weigh the reasons upon which it is founded with coolness and deliberation, and suffer not yourselves to be imposed upon, or your passions inflamed by artful men, or by words without meaning. We can have no interest separate from yours; and as to our political principles, when you recollect that all have been the constant opposers of our British foes, and most of us have risked our lives and fortunes, during the whole of the contest, you can entertain no doubt about them. The proposed alterations are not experiments, but are founded on reason and the experience of our sister states. The future welfare of your country is in your own hands. If you give her a good government she will be great and free. If you mistake in this point, the die will be cast, and you are sealed up to insignificance or misery.

We have not the most distant prospect, that the gentlemen in the minority will concur in calling a convention to amend the constitution, which we have thought, we hope not improperly, the most important part of our business; and it is that you might have an opportunity to instruct them on that subject, that we have at present suspended our deliberations.

At the adjourned session of the Council, in June, their table was loaded with remonstrances against calling a convention, signed by more than ten thousand citizens. By this it was seen that it would be utterly useless to call a convention, if the required majority of the Council should assent to it, and no further attention was paid to the subject.

It appears by the journals of the Council, and by the history of those times, that the people were very highly excited, that party spirit never produced a more bitter animosity, between contending parties.

And the leading men, who were deeply impressed with the necessity of amending the Constitution to secure the people in the enjoyment of their rights, abandoned the contest, hoping the excitement would subside, and the people be enabled calmly to survey their situation, and form a deliberate judgement in the case. They thought the storm had come to its height, and, as it was supposed no further attempts could be made to amend the Constitution, until the end of the Septenary which had then just commenced, and so nothing left as a subject of contention, they hoped, that not only would the storm abate, but the swells of pop-

ular passion wholly subside, and, as we shall see, they were not disappointed.

On the 24th day of March, 1789, the Legislature passed a resolution, by a vote of 41 to 17, referring to the people the question whether a convention should be called to amend the Constitution. This resolution was opposed on the ground that the Constitution, having provided a mode of amending it, it would be a violation of that instrument to pursue any other mode. It was answered, that although the Legislature cannot call a convention to amend the Constitution, that power being vested in the Council of Censors exclusively, yet, as the people are the source of all political power, the Legislature may refer to them the question, whether a convention shall be called, and this opinion prevailed.

When the Colonies formed their first Constitutions, they made a declaration of the right of self-government, as the foundation of all their proceedings, but it does not appear that the question ever occurred to them whether this right must always exist, or might be suspended by the people themselves. But this question was presented to the people of Pennsylvania, and they decided it. And in framing their new Constitution, they al-

tered the declaration of the right of self-government, and made it read as follows: "That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety and happiness. For the advancement of these ends they have *at all times* an inalieniable and indefeasible right to reform or abolish their form of government, in such manner as they may think proper." This declaration is found in most of the Constitutions, subsequently adopted.

If this be not a correct declaration of the right of self-government, if the people can make their constitution unalterable for seven years, it will be a mere question of expediency whether it shall be seven or seven hundred. It is difficult to raise any solid objection to this mode of proceeding by the people of Pennsylvania, in amending their constitution. There was no opposition to the existing government, no attempt to overthrow it,—on the contrary, every step was taken by and through its organs. There is certainly no analogy between this mode of proceeding, and the mode of proceeding in Rhode Island. In that State, a portion of the people combined to form a new constitution, in opposition to the existing government,

to overthrow it and establish a new government in its place.

To admit such a mode of proceeding would sap the foundation of our free institutions—to provide for it in a constitution of civil government, would be to provide for its own destruction.

But the people of Rhode Island were in a peculiar situation. By the charter of Charles II., the Governor and Company were authorized to admit such and so many persons free of the corporation as they should see fit. And as was natural in their then situation, they made all free-holders free of the corporation, all others were deprived of the right of suffrage. For many years after this, almost all the inhabitants of the Colony were free-holders, and until after the close of the Revolutionary War, so small a portion of the people were deprived of the right of suffrage by this property qualification, but little complaint was heard. But after a course of years, by reason of a great increase of Commerce and Manufactures, it became a question whether more or less than half of the inhabitants were deprived of the right of suffrage. And as the number of those who were deprived of their political rights increased, their complaints become louder and louder,

and were threatening; but the free holders, who held the whole power of government in their hands, refused to listen to their complaints. At length, the free holders, the law and order party as they were now called, finding it necessary to yield to the public sentiment, adopted a constitution granting the right of suffrage to all except foreigners. To make them freemen a property qualification was required. To this, their opponents, the Dorrites, as they were called, refused to accede, although they had obtained all which they had at first contended for, and attempted to overthrow the existing government and establish their own revolutionary constitution by force, but failed.

Thus, in this case, as in most political contests, it was at first a contest for principles, but degenerated into a contest for power.

The Legislature of Pennsylvania at their session in September, 1789, finding that a majority of the people were in favor of a convention, passed a resolution calling a convention to amend the constitution, to meet on the 24th of November following. The convention met and continued their session till the 5th of February, 1790. The following distinguished jurists and statesmen were members

of this august body: James Wilson, James Ross, Albert Gallatin, Timo. Pickering, Ths. McKean, Wm. Lewis, Thomas Mifflin, and Alex. Addison.

The people of Pennsylvania had suffered so much from the violent and tyrannical proceeding of their Legislature, and had witnessed so great an abuse of the power of appointment, vested in their Executive Council, that the reader will be prepared to find that, in framing their new constitution, the removal of these evils was a primary object. They divided the Legislature, by constituting a Senate, the members to be elected for four years. They provided for an election of a Governor by the people, to hold his office for three years, and vested in him the power of appointment and removal, without the advice and consent of a Senate or Council. The Judges of the Supreme Court were to hold their office during good behavior.

They provided no mode of amending the Constitution, preferring the mode they had pursued in amending it. They considered that as long as the people are satisfied with the Constitution, it should never be disturbed by any theoretical speculations, and that whenever the people are dissatisfied with it, this dissatisfaction will be represen-

ted in the Legislature, and they will refer the question to the people, whether a convention shall be called.

It appears from the journals of the convention, that there was an unexampled degree of unanimity through their whole proceedings, and when they had gone through with the constitution, it was adopted with one dissentient.

It also appears from the journals of the convention, that not one word was said in favor of the last section in the constitution, providing for a Council of Censors.

The people manifested no dissatisfaction with this constitution, until the year 1825, when the Legislature passed an act referring to the people the question whether a convention should be called, and they decided against it.

CHAPTER IV.

The first section in the Bill of Rights in the Constitution of Pennsylvania, so amended as to abolish slavery.—Act to prevent the transportation of negroes and mulattoes out of the State.—Second section in the Bill of Rights amended. —Ministerial acts.—Fifteenth section amended.

We are now prepared for an examination of our first Constitution as established by the Convention. We shall at present call the attention of the reader to those few sections of our Constitution which were formed by making some additions to certain sections of the constitution of Pennsylvania. The reader has seen that the framers of our Constitution took the first Constitution of Pennsylvania as a model, and that they made but very few additions to it, but their attention was arrested by the first section in the Bill of Rights. They were satisfied that it contained a declaration of all the natural rights of man, but they saw a portion of their fellow citizens deprived of every one of these rights, and they determined that those rights should be restored to them, and that they should be protected in the enjoyment of them by the Constitution. Pennsylvania had

only made a declaration of those rights, and left it to the legislature to secure all classes in the enjoyment of them, and they did it. Some other states made the same declaration, but afterwards treated it as a perfect nullity, and it had no effect except as a proclamation to the world that when they stripped one class of their fellow beings of all their natural rights, they sinned against light and knowledge. But the framers of our Constitution, governed by the principles of the natural law, were of course consistent, and did their work thoroughly by making the following addition to the section:

Therefore, no male person, born in this country, or brought from over sea, ought to be holden by law, to serve any person, as a servant, slave or apprentice, after he arrives at the age of twenty-one years, nor female, in like manner, after she arrives at the age of eighteen years, unless they are bound by their own consent, after they arrive at such age, or bound by law, for the payment of debts, damages, fines, costs, or the like.

Every Vermonter has reason to be proud of this—his own State was the first to abolish Slavery by the Constitution.

It has been said that the soil of Vermont was never polluted by Slavery, but this is a mistake; there was Slavery in all the New-England

Colonies, and some of the slaveholders moved into the Grants and brought their slaves with them. The following act proves this, as well as the vigilance of the Legislature in protecting all classes of their fellow-citizens in the enjoyment of their natural and constitutional rights.

AN ACT to prevent the sale and transportation of Negroes and Mulattoes out of this State.

Whereas, by the constitution of this State, all the subjects of this commonwealth, of whatever colour, are equally entitled to the inestimable blessings of freedom, unless they have forfeited the same by the commission of some crime; and the idea of slavery is expressly and totally exploded from our free government;

And whereas, instances have happened of the former owners of Negro slaves in this commonwealth, making sale of such persons as slaves, notwithstanding their being liberated by the Constitution; and attempts been made to transport such persons to foreign parts, in open violation of the laws of the land;

Be it therefore enacted, &c. that if any person shall, hereafter, make sale of any subject of this State, or shall convey, or attempt to convey, any subject out of this State, with intent to hold or sell such person as a slave; every person so offending, and convicted thereof, shall forfeit and pay to the persons injured, for such offence, the sum of one hundred pounds, and cost of suit; to be recovered by action of debt, complaint, or information.

The second section of the Bill of Rights in the Constitution of Pennsylvania also arrested the attention of the framers of our Constitution.

They had less confidence in that section because it came from that Quaker State, and because the Convention who framed that Constitution, sat and did business on the Sabbath as well as on week days. They were pleased with the section, as it contained a declaration of the right of religious liberty, the rights of conscience, but they were fearful that this religious liberty would be somewhat larger than that to which the people of New-England had been accustomed. And they justly considered, that it was necessary to adapt the Constitution to the religious sentiments, habits and customs of the people of the State.

In all the colonies of New-England, with the exception of Rhode Island, the towns had been authorized by the Colonial Legislatures to tax the inhabitants for building meeting-houses and the support of preaching. And as there was a majority in the several towns of the Congregational order, the practical operation of the law was to empower that order to tax, and they did tax the minor sects to aid them in building their meeting-houses and supporting ministers. Laws had also

been enacted and executed, to enforce a due observation of the Sabbath. And as it was seen that the people were eminently religious, and it being admitted by all that none but a religious people could support our free institutions, they were fearful of any change in the laws for the support of religion. But the minds of men were at that time in a transition state, as to their views of religious liberty; they had more enlarged and just views of it than their puritan fathers.

The Puritans considered that religious liberty belonged only to the true church, and consisted in a power to punish hereticks and compel all to embrace the true religion. Entertaining these views they could not but think it right to tax them for the support of that religion. But the principle of liberty and equality which lies at the foundation of our free institutions, had wrought a change in the minds of men respecting religious liberty, and the ecclesiastical government was becoming more analogous to the civil government. It has ever been so; that strong propensity to analogy in man which is discovered in all departments of life has rendered ecclesiastical governments through the world analogous to civil governments. And these two governments generally, after some

contention for the sovreignty, have found it necessary to unite, to keep the people in subjection. Hence, the union of Church and State.

The framers of our Constitution, having, as suggested, founded it on the equal rights of the citizens, and having pretty correct notions of religious liberty, had no idea of authorizing the Legislature to tax the minor sects for the benefit of the standing order, yet they considered that as all classes of the community had a common interest in the support of public worship, as they had in the support of common schools, they ought to contribute in like manner for its support.

And they authorized the Legislature to pass Laws to enforce the observation of the Sabbath, and to tax the people for the support of public worship, trusting that they would do it in such manner as to afford no just ground of complaint. They accordingly made the following addition to the Section: "*Nevertheless every sect or denomination of people ought to observe the Sabbath or Lord's day, and keep up and support some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.*"

The Legislature at their first session in March, 1778, passed an act to enforce a due observation

of the Sabbath, and at the October session in 1781, an act was passed authorizing towns to lay taxes on the lands within their limits, for the purpose of building meeting-houses, shool-houses and bridges, but they passed no act authorizing towns to lay taxes upon their lists for the building of meeting-houses and the support of ministers, until October 1783, when they passed an act entitled an act "enabling towns and parishes to erect proper houses for public worship, and support ministers of the gospel." The following is the preamble with extracts from the enacting part:

AN ACT to enable Towns and Parishes, to erect proper Houses for public Worship, and support Ministers of the Gospel.

Whereas, it is of the greatest importance to the community at large, as well as to individuals, that the precepts of christianity and rules of morality be publicly and statedly inculcated on the minds of the inhabitants.

Therefore,

Be it enacted, &c. that whenever any town or parish shall think themselves sufficiently able to build a meeting-house, or settle a minister, it shall be the duty of the town or parish clerk, on application of seven freeholders of such town or parish, to warn a town or society meeting, mentioning the time, place, and matter to be debated; giving twelve days notice, by posting the same at

the most public place, or places, in said town or parish: and that two thirds of the inhabitants of such town or parish, who shall meet agreeable to such warrant, being legal voters, and of similar sentiments with respect to the mode of worship, shall be hereby authorised to appoint a place or places for the public worship of GOD, and fix on a place or places for building a house or houses of worship, and vote a tax or taxes sufficient to defray the expense of such building or buildings; and also to hire, or otherwise agree with, a minister or ministers to preach in such town or parish, either to supply such town or parish with preaching, or on probation for settlement; and further to vote such minister or ministers such settlement or settlements in money, or otherwise, as to them shall seem equal; and to vote such minister or ministers such annual support in money, or otherwise, (to be agreed on between such minister or ministers and people) as shall be found necessary; to be assessed on the polls and rateable estates of persons living, or estates lying, within the limits of such town or parish.

Provided, no person shall be obliged to pay such tax or taxes, or any part thereof, or his estate taken therefor, who shall be hereafter described and exempted by this act.

Provided also, that no vote shall be deemed legal and binding on such inhabitants as are not by law exempted as aforesaid, unless there shall be twenty-five legal voters in the affirmative.

And if the inhabitants of any town or parish shall agree to build a meeting-house or houses,

agreeable to the tenor of this act, but shall not agree on the place or places to build the same; in that case it shall be the duty of the county court, at their sessions within the county where such difficulty may arise, at the request of not less than seven members, inhabitants of such town or parish, to appoint an indifferent committee at the discretion of the court, and cost of such town or parish, to view attentively such town or parish, and find out the most convenient place or places for such houses, and there set up a stake or stakes, and acquaint the clerk of such town or parish therewith, who shall make a record thereof: and such committee shall report their doings to the court that appointed them; which court shall examine said report, and if found to be just and equal, shall establish the same.

And whereas, there are in many towns and parishes within this State, men of different sentiments in religious duties, which lead peaceable and moral lives, the rights of whose conscience this act is not to control; and likewise some, perhaps, who pretend to differ from the majority with a design only to escape taxation. Therefore,

Be it enacted, that every person or persons, being of adult age, shall be considered as being of opinion with the major part of the inhabitants within such town or parish where he, she or they shall dwell, until he, she or they shall bring a certificate, signed by some minister of the gospel, deacon or elder, or the moderator in the church or congregation to which he, she or they pretend

to belong, being of a different persuasion; which certificate shall set forth the party to be of their persuasion; and until such certificate shall be shewn to the clerk of such town or parish, (who shall record the same) such party shall be subject to pay all such charges with the major part, as by law shall be assessed on his, her or their polls or rateable estate.

Many towns taxed the inhabitants to raise money for building meeting-houses, settling and supporting ministers, agreeably to the provisions of the act. It was productive of great good; the people in the different towns collected from various parts of New-England more readily united for the support of public worship in a mode to which they had been accustomed, than they would have done in any new mode. But in most of the towns there was a greater proportion of those belonging to the minor sects, than there were in the other New-England States, and an opposition to the Ministerial act was at once manifested. And this opposition naturally increased from year to year, until the year 1801, when the Legislature repealed the clause in the Ministerial Act, enabling any individual to obtain a certificate to exempt him from the payment of taxes, and enacted the following as a substitute:

——That every person of adult age, being a legal voter in any town or parish, shall be considered as of the religious opinion and sentiment of such society, as is mentioned in said act, and be liable to be taxed for the purposes mentioned in said act, unless he shall, previous to any vote, authorized in and by said act, deliver to the clerk of said town or parish, a declaration in writing, with his name thereto subscribed, in the following words, to wit:

"I do not agree in religious opinion, with a "majority of the inhabitants of this town."

This, it was supposed, would remove all objections and silence all complaints against the Ministerial act, but it was soon found that the number of those opposed to the act was increasing. At every session of the Legislature, efforts were made to repeal the act, until the year 1807, when the Legislature repealed the offensive parts of it, divesting the towns of all power, to act or pass any vote for the building of meeting-houses or the support of ministers, leaving every individual to decide for himself whether he would contribute anything for the promotion of those objects. It was well that this act was continued so long under various modifications. It has taught us a valuable lesson, that all laws must be made in the spirit of our free institutions, or they will be neither satisfactory, useful or permanent.

It was for some time supposed that the dissatisfaction of the people with the Ministerial act, arose from their objections to its details, and they were modified. But this appeared to have no other effect than to increase the opposition to the act.

And at length the people spoke to the Legislature in a language which could not be misunderstood,—we will not permit the Legislature to interfere in any manner with our religious concerns. When this act was repealed, great fears were entertained that the cause of religion would suffer, that public worship could not be supported without the aid of the law, that ministers would be driven from their profession for want of a support, but the condition of the clergy was improved by the repeal of the act. And now after the experience of more than forty years, it is evident that the time had arrived for setting aside that system of supporting public worship by taxation, which was adopted by our puritan fathers, and which was so necessary in that age for the support of a pious and learned clergy, and which had been so beneficial in the first settlement of this State. But useful as that system had been, while those in the minor sects were few in number, it proved otherwise when their numbers had greatly increased.

As none but the Congregationalists taxed them for the support of the gospel, they naturally imbibed a strong prejudice against that order, but since the cause has been removed, since all the christian sects have been placed on an equal footing, that prejudice is wearing off, and there is a fair prospect that all the christian sects will treat each other in a true christian spirit.

The next section in the Constitution of Pennsylvania, which attracted attention was the 15th section in the frame of government, which was amended and made the 16th section of our constitution. It has been seen that by the Constitution of Pennsylvania, the supreme legislative power was vested in the Assembly, and the supreme executive power was vested in the Governor and Council. The latter was vested with no legislative power, nor had they the slightest connexion with the Assembly in legislation. This was not satisfactory to the framers of our Constitution,and they so amended it, as to require all bills of public nature to be first laid before the Governor and Council for their perusal and proposals of amendment, before they should be read in General Assembly for the last time of debate and amendment.

This amendment, at first view, will appear to be of no importance, as it conferred on the Governor and Council no power in legislation, and yet in practice it proved to be of great importance,—it affected the whole course of legislation, rendering the Governor and Council nearly a co-ordinate branch of the legislature.

No one who personally knew Gov. Chittenden, would hesitate to say that he was the author of this amendment, his sagacity and his experience enabled him to foresee the importance of it. He had been President of the Council of Safety from its first organization. He knew the men who composed that Council, and he foresaw that many of them would be members of the Council under the Constitution. He had also been a member of several Conventions, and was acquainted with the members, and knew that many of them would be members of the House of Representatives. And his good sense and experience taught him that they would need the advice and direction of the Governor and Council. And there is very little doubt that he contemplated the very mode of legislation which was pursued at the first session, as the result of this slight connexion between the two Houses in legislation. And that it would en-

able the Governor and Council to exert an influence upon the House of Representatives. Accordingly we find that at the first session, as all bills originating in the Assembly were to be laid before the Governor and Council for amendment, the assembly in several instances requested the Governor and Council to lay bills before them, doubtless because they considered them more capable of drafting bills, and that it would save them the trouble of amending the bill if sent from the House. But another practice was introduced and continued through the Septennary of far greater importance. Whenever the Governor and Council proposed amendments to a bill from the House, and the House could not concur in the amendments, the two Houses joined in Grand Committee to discuss the subject and report their opinion to the Assembly. And this mode of proceeding was pursued, in all cases when any important subject was debated in the Assembly, they requested the Governor and Council to join in grand Committee.

Gov. Chittenden of course presided and usually took a leading part in the debate. He never made a set speech, but would seize on some prominent point, and by a few sensible and forcible

remarks usually carried the Committee with him.

This mode of proceeding was pursued, and the two Houses went on harmoniously together, without any act directing the mode of passing laws, until February 1784, when an act was passed entitled an act "directing the form of passing laws." This act established the mode of proceeding as above stated and limited, in which the Governor and Council should return to the Assembly all bills sent to them for amendment.

I am aware that it must appear strange if not incredible to men of the present generation, that the House of Representatives, a body somewhat numerous, vested with supreme legislative power, and the Governor and Council, a small body, vested with no power, yet slightly connected with the House in legislation, should have thus proceeded harmoniously together. Yet it will appear credible and natural, when we refer to the peculiar condition of the people of Vermont at that time, and to some of the peculiar views, sentiments and habits of the men of that age. The inhabitants of the New-Hampshire Grants had been united, and had acted together in defence of their all, their farms and their independence as a people, not under an organized government, but

by a voluntary association of individuals. They constituted their Council of Safety, and their Sub-Committees of Safety, whose decrees had all the force of laws, and the members of the Council and of the Committees were treated with all the respect which they had been accustomed to pay to the magistrate.

This state of things continued until the government was organized under the Constitution. And as the common danger continued, the independence of Vermont not having been acknowledged, all felt the necessity of acting in concert; to act thus under their former system had become a habit so strong, that for some time after the government was organized, the Governor and Council exercised all the powers, that the Council of Safety had exercised, that is, all the powers of government, legislative, executive and judicial. In this state of things, and for reasons which have already been given, little attention was paid to the Constitution; it had served to put the machine in motion, but served little purpose as a regulator; reliance was wholly placed on a union of councils, as it had before been, and many of the people being influenced by the peculiar religious sentiments and staid habits of the puritans, this fit-

ted them for the condition in which they were placed. To reverence the magistrate and to look to old men for counsel, was with them a religious duty. It was then natural for the House of Representatives composed of younger men, to look to their fathers and superior magistrates, the Governor and Council, for advice and direction.

CHAPTER V.

Ratification of the first Constitution of Vermont.—Acts of the Legislature making the Constitution a law of the State. Extracts from Vt. State Papers.—Address of the Council of Safety to the people.

Having given a concise history of the Constitution of Pennsylvania, we will now proceed to give a more particular history of our own Constitution, noting as we go along the additions that were made to the Constitution of Pennsylvania, in framing the Constitution of Vermont.

A question has been raised whether our Constitution was duly ratified; to prove that it was not, Gov. Slade makes the following note under the Constitution as published in Vermont State Papers, page 241.

"It is worthy of remark, that this Constitution was never submitted to the people for their appro-

bation. It is stated by Ira Allen, in his history of Vermont that the credentials of the members of the Convention, authorized them to *form* a Constitution, but were silent as to its *ratification;* and that, owing to the unsettled state of public opinion, it was thought hazardous to submit it, directly, to the decision of the people. It was, however, silently submitted to,—not only because a government, organized under even a defective constitution, was esteemed preferable to the unsettled state of things which had so long existed, but because such organization seemed necessary to lay the foundation for a recognition of the sovereignty of Vermont, and her admission into the Union."

At the session of the Legislature in 1779, an act was passed, entitled "An Act for securing general privileges of the people, and establishing common law and the constitution, as part of the laws of this State," and concluding as follows:

Be it further enacted by the authority aforesaid, that the Constitution of this State, as established by general convention held at Windsor, July and December, 1777, together with, such alterations and additions as shall be made in such Constitution, agreeable to the 44th section in the plan of government, shall be forever considered, held, and maintained, as part of the laws of this State.

In June, 1782, an act was passed entitled an act establishing the Constitution, and securing the privileges of the people. By this act the forego-

ing section was enacted in the same words. To the first of these acts, Gov. Slade appended the following note :

"The Constitution, if it was any thing, was, already, the fundamental law of the State, possessing authority, necessarily paramount to any act of the legislature,—the very charter, indeed, of its existence, and by which alone, it was invested with power to legislate at all,—and yet we here find the legislature gravely attempting to give to this instrument the *force of law!*"

A recurrence to the history of the Constitution, will explain this singular proceeding. We have before suggested, that it was never sanctioned by the people, but went into operation as it came from the hands of the Convention, and was submitted to, rather from necessity than choice. The truth of that suggestion is fully confirmed by this attempt to *legalize* the Constitution ; and we are irresistibly led to the conclusion, that it was considered a mere nullity by the statesmen of that period."

These constitutional principles stated by Gov. Slade are at this day known to all, and admitted by all, the learned and unlearned, but it does not follow, that the framers of our Constitution were governed by them or ever had an idea of them. Every one, who in an examination of the history of our Government, shall go back beyond the reach of his own memory will be exposed to similar errors.

When we extend our researches back for a period of years, to learn the true history of a government which has for ages been administered on the same principles, we are liable only to make some unimportant mistakes from a change in the language ; we may mistake the meaning of an act or the motives for passing it ; but our government originated in a revolution, important, as it overthrew the authority of the British Government and established our independence, but still more important as a revolution in civil government.

For the first time since the existence of man, we find a people forming a written Constitution of civil government, founded on the great principle, that all power is inherent in the people, and all free governments are founded on their authority. And in the exercise of their primitive sovereignty, the people parcelled out the powers of government, by constituting a Legislative, Executive and Judicial department, limiting the powers of each.

Now can we suppose, that the framers of this Constitution had a very accurate idea of the system which they had formed,—did they all at once become profound Constitutional lawyers ? In all

governments which had previously existed, the legislature, the law-making power, had been sovereign, absolute and uncontrollable. Judge Blackstone says, "Legislation is the greatest act of superiority that can be exercised by one being over another, wherefore it is requisite to the very essence of law, that it be made by the supreme power. Sovereignty and Legislation are, indeed, convertible terms. One cannot subsist without the other." This constitutional law, this omnipotence of the Legislature, the Colonists brought with them from the mother country, as they brought with them the common Law. And when they constituted the legislature, they considered that its power was necessarily supreme and uncontrollable, and that all constitutional restrictions upon their power were merely directory. No idea was entertained that an act of the legislature, however repugnant to the Constitution, could be adjudged void and set aside by the judiciary, which was considered by all a subordinate department of the government. And these sentiments generally prevailed until after the Constitution of the United States was promulgated. It was then seen that the people of the United States, in the exercise of their sovereignty, had formed a Constitution

binding upon the whole United States, had restricted the powers of the State Legislature, had declared that Constitution to be the supreme law of the land, and had constituted a judicial tribunal to decide all questions arising under that Constitution. After this, it was no longer possible to maintain the political heresy which had so long prevailed. It was now seen that a State Constitution, so far as it was not affected by the Constitution of the United States, was from its very nature, the supreme law of the State, without any declaration to that effect; that all acts of the Legislature repugnant to the Constitution were void, and must be set aside by the Judiciary.

That I have given a correct history of constitutional law at that early period, relative to the powers of the Legislature, the reader will be satisfied by recurring to the Constitution and the proceedings of the Council of Censors. It has been seen, that the second section in the frame of government is in these words—"the supreme legislative power shall be vested in a House of Representatives." Now whatever may be said of the men who framed our first Constitution, it must be supposed that the person who wrote, and those who adopted this section in the Constitution of Pennsylvania, were accustomed to use precise and

appropriate language, and if it be said that the word supreme was a careless expression made use of in this case, because the law-making power had been termed the supreme power, be it so. It proves that the distinction between the power of the legislature they were constituting, and the power of all prior legislatures, had never occurred to them. If it had occurred to them that they could limit the power of the legislature which they constituted, surely, they would not have conferred on it supreme power.

In the year 1777, the constitution of New-York was adopted, by which supreme legislative power was vested in a Senate and House of Representatives. The first Constitution of Massachusetts was not adopted until the year 1780. The following is the first article—"the department of legislation shall be formed by two branches, a Senate and House of Representatives." When the Constitution of New-York was revised, the first article was made to read—"the legislative power of this State shall be vested in a Senate and Assembly." In the year 1790, the first Constitution of Pennsylvania, was amended, and the first article made to read as follows—"the legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a

Senate and House of Representatives."

We may here refer to the last section of our Constitution, by which it is made the duty of the Council of Censors to recommend to the Legislature, the repealing of all such laws as shall appear to them to have been enacted contrary to the principles of the Constitution. It appears by this, that the framers of the Constitution did not perceive that all unconstitutional acts would be void, but they considered that they must remain in full force and effect until repealed. The Council of Censors were authorized to order the Assembly to impeach, as this was not a legislative act, but they were not authorized to order the Assembly to repeal their acts, because they were vested with supreme legislative power. I shall hereafter pay more particular attention to this section and to its practical operation. To close this subject and to satisfy the reader, what was the constitutional law of that period, I refer to the following extract from the address of the first Council of Censors. After having censured the legislature for passing an act which was a gross violation of the Constitution, the Council thus conclude: "And this chain of adamant would be effectually riveted, as redress without a dissolution of the

government could not be expected, none but the legislature, whose interest it would be to withhold it, being competent to give it."

By the foregeing it appears that the powers of a legislature, established by a State Constitution, were at that time considered as supreme and uncontrollable; that a written Constitution of civil government had not been raised to the dignity of a law, much less to the rank of a supreme law of the State, as it in fact was, before the Constitution of the United States was adopted. And is it wonderful, that a distinction was not at once taken between the powers of a legislature established by a State Constitution, and the powers of the legislature in all other governments, and that it was not perceived that the law-making power could be limited?

Sovereignty had been exercised over the people as subjects. That sovereignty had been swept away and the people had become the sovereigns, wielding the supreme power of the State. Thus situated, time was required for the people to break up their former habits of thought, and set aside the principles of the governments under which they had lived, before they could discover the principles of their new government. Is it

then incredible that the legislature passed the act to give the force of law to the Constitution? The wording of the act affords conclusive evidence that this was their object. If the act was passed to remedy a defect in the ratification of the Constitution, it is difficult to conceive why they should go beyond the existing Constitution; but they did go further, and enacted "that the Constitution as established by the Convention, subject to such alterations and additions as shall be made in it, agreeably to the 44th section of the frame of government, shall ever be considered, held and maintained as a part of the laws of this State." Now they must have embraced and legalized all amendments, which should be made to the Constitution, either to save the trouble of passing an act at the end of each Septenary, to legalize the amended constitution, or they must have considered that if they made the existing Constitution a law of the State, forever, it could never be amended without a repeal of their act.

From what has been said, it is very clear that the act was not passed to remedy any supposed omission of a ratification of the Constitution. And, surely, if it was, it affords no explanation of the transaction, for the legislature had no power to

pass any act affecting the Constitution. They were not elected by the people, in the exercise of their primitive soveriegnty, to act in relation to their fundamental law, the constitution, but to administer the government under the Constitution.

The legislature of Vermont did not stand alone in passing acts affecting the Constitution, for on the 20th of September 1777, the legislature of New Jersey passed an act altering the Constitution of that State, by substituting the word State for the word Colony, in Commissioner's writs, &c. No other alteration has been made in that Constitution since it was adopted in 1776.

The reader will recollect that the only evidence to prove that the Constitution was considered invalid is an extract from Ira Allen's history of Vermont. Allen says that the credentials of the members of the Convention authorized them to form a Constitution, but were silent as to its ratification. It appears from this that Allen was unacquainted with the constitutional history of that period, and it seems he considered that every constitution, to have any binding force, must be ratified by the people in their primary assemblies. Now until some years after our Constitution was adopted, every State Constitution was formed by

a convention authorized to form a Constitution without any subsequent ratification, and of course their credentials were silent as to a ratification, for none was required. Of this there can be no doubt, for it is proved by matter of record. Some years after this, and before Allen wrote his history, the legislatures of some of the States were authorized to make amendments to their Constitutions, but to render them valid a ratification by the people was required. Allen does not intimate that any objection was made to the Constitution because it was not ratified by the people, and it is confidently believed that none was ever made.

The following address of the Council of Safety to the people of Vermont, clearly proves that they pursued the same course in forming their Constitution that was pursued by all the other States. They called a Convention to form and establish a Constitution binding upon the people, without being laid before them for their ratification.

IN COUNCIL OF SAFETY,
BENNINGTON, Feb. 6th, 1778.

To the Inhabitants of the State of VERMONT:

GENTLEMEN,—The united and joint representatives of this state, in their general convention,

held at Windsor, on the 2d of July last, did compose, and agree, unanimously, on a constitution for the future government and mutual advantage of its inhabitants. It was then proposed by the joint agreement of the said representatives, that such constitution should be printed, so as to have had them circulated among the inhabitants, seasonably, to have had the general election of representatives to compose the general assembly, in December last; who, by agreement, were to have met at Bennington, within this State, in the month of January last. But finding, by repeated experience, that the troubles of the war, and encroachments of the enemy, would, of necessity, render it impossible, this council did think fit to again call on the members of the general convention, to meet; who, accordingly, met at Windsor, on the 24th day of December last, and did, unanimously, agree to postpone the day of election until the first Tuesday of March next, and the sitting of the assembly to be at Windsor, on the second Thursday of March next. The constitution is now printed, and will be distributed among the inhabitants of the several towns in this state, so early, that they may be perused before the day of election; which, this council hope, will, sufficiently, recommend the most safe and just method of choosing of representatives to compose the general assembly. Nothing but a real zeal for the future well being of the United States of America, in general, and this, in particular, could have induced this council to have undertaken the arduous task of sitting, so many months successively, to

provide for the safety of its inhabitants. They, therefore, flatter themselves that their services will meet the approbation of their employers. The Council are of opinion that nothing but the want of a firm attachment and joint connection of the inhabitants of this state, can frustrate, or prevent their being what they so reasonably wish to be.

I am, Gentlemen, by order of Council,
Your most obd't humble Serv't,
THOMAS CHITTENDEN, *Pres't.*

Since this work has been in press, I have been so fortunate as to find, in an old volume containing the revised laws of 1787, the following acts of the Legislature. An act establishing the Constitution of Vermont, and for determining who are entitled to the privileges of the Constitution and Laws.

Be it enacted, That the Constitution of this State as revised and established by convention, held at Manchester, in June 1786, subject to such alterations and additions as shall be made agreeable to the 40th section in the plan of Government, shall be forever considered, held, and maintained as part of the laws of this State.

And be it further enacted, That all the subjects of the United States of America, shall, within this Commonwealth be equally entitled to the privileges of law and justice with the citizens of this State, in all cases proper for the cognizance of the civil authority, and courts of judicature in the same, and that without partiality or delay. And

that no man's person shall be restrained, or imprisoned, unless by authority of law.

And, in an act, for regulating the election of Governor, Lieut. Governor, Council, Treasurer, and Representatives, is the following clause—the act is not divided into sections:

Be it further enacted, That every *freeholder* of the full age of twenty-one years, having resided in this State for the space of one year, next before the election of Representatives, and who is of a quiet and peaceable behavior, and will take the following oath, (or affirmation,) shall be entitled to all the privileges of a freeman of this State.

There are several other clauses in this act intended to give to certain sections of the Constitution the form, force and effect of an act of the Legislature: but this it is seen, makes an important alteration in the 18th section in the frame of government. That section gave to all, the right of suffrage without any property qualification; the act deprived all of the right of suffrage except freeholders. This produced a different practice in the admission of freemen in the different towns; in some towns they were governed by the Constitution; in other towns, they were governed by what they considered the paramount law—the act of the Legislature. In the revision of the laws

in 1797, all the acts of the Legislature, legalizing or altering the Constitution were swept away, but they are of more practical use than ever—they put the question we have been discussing at rest —they prove conclusively that an act of the Legislature was considered paramount to the Constitution, and consequently, that every act of the Legislature, however repugnant to it, must continue in force until repealed. Hence the Council of Censors were vested with ample *authority* to *recommend* to the Legislature the repealing of such laws as shall appear to them to have been enacted contrary to the principles of the Constitution.

It may appear to the reader that I have occupied too much space—he may feel that I have detained him too long with the discussion of this subject, but he will find it very useful, as it will enable him to account for the origin, and some of the singular provisions of the last section of the Constitution, which will be the subject of the next chapter.

CHAPTER VI.

The last section of the Constitution providing for a Council of Censors, originated in a want of confidence in the Government which they had instituted.—Expensive mode of amending the Constitution.—Mode of amending the Constitution in Kentucky and Missouri.—Extracts from Chipman's principles of Government.

Having examined those sections of our Constitution which were formed by making additions to certain sections of the Constitution of Pennsylvania, I will now call the attention of the reader to the last section of the Constitution, providing among other things for its amendment. This section, it has been seen, is a copy of the last section in the Constitution of Pennsylvania, with the exception of that part which relates to the number and the mode of electing the members of the Council.

In the concise history which has been given of the first Constitution of Pennsylvania, the reader has seen what was the practical operation of the provision in that State. But to ascertain what has been, and from the nature of the provision, must be its practical operation in this State, is of far greater importance to us. I propose, therefore, to treat the subject somewhat at large, and

show that the principles on which our institutions rest were but imperfectly understood,—that there was a want of confidence in the people and in the Legislature, and that the Council of Censors was constituted for a protection against both.

As this section was soon abolished in Pennsylvania, and most of the thirty American States have since that time, either amended their Constitutions or formed new ones, and not one of them, with the exception of Vermont, has adopted this section, or any provision contained in it, it seems that it must have originated in some peculiar views of civil government entertained by those who framed it, and which arose from the novel situation in which they were placed. Our Constitution of civil government being only evidence of a civil compact, an agreement by and between the whole people, upon the manner in which they would be governed, and the government has proved to be so efficient in preserving good order and promoting the happiness of the people, that it seems to us it naturally grew out of the moral and social nature of man, and we cannot conceive it possible that any rational being could have entertained a doubt of the capacity of the people for self-government. We must be undeceived with

respect to this, before we can have any clear understanding of our early history.

Man is a creature of habit, and in nothing does habit appear more akin to instinct, than it does in relation to the government under which he lives. Without this trait in the character of man, no government could long exist.

The people of the American Colonies had lived so long under the British Government, a limited monarchy, that they had become strongly attached to it by habit. They asked nothing, they desired nothing but the enjoyment of their Constitutional rights as British subjects, and they complained of nothing but a violation of those rights by the Ministers of the King, and they felt a strong desire for a reconciliation between the Colonies and the Mother Country. These sentiments prevailed and were generally expressed, until after the Declaration of Independence. In the first Constitution of New Hampshire, adopted on the 5th day of January 1776, we find the following :

Therefore, for the preservation of peace and good order, and for the security of the lives and properties of the inhabitants of this colony, we conceived ourselves reduced to the necessity of establishing a form of government, to continue during the present unhappy and unnatural contest

with Great Britain; protesting and declaring, that we never fought to throw off our dependance upon Great Britain—but felt ourselves happy under her protection, while we could enjoy our constitutional rights and privileges—and that we shall rejoice, if such a reconciliation, between us and our parent state, can be effected, as shall be approved by the continental congress, in whose prudence and wisdom we confide.

And to the Constitution of New Jersey, adopted July 2, 1776, two days before the Declaration of Independence, the following proviso was annexed:

Provided always, and it is the true intent and meaning of this congress, that if a reconciliation, between Great Britain and these colonies, should take place, and the latter be taken again under the protection and government of the crown of Britain, this charter shall be null and void—otherwise to remain firm and inviolable.

In the government of Great Britain, to which the people of the Colonies were so strongly attached, as well as in all other existing governments, there was a power above the people which governed them as subjects.

Under this government, the people of the Colonies occasionally witnessed scenes of popular violence, endangering the lives and property of all, and they had rejoiced to see the violators of the

law subdued, and peace and good order restored in the name and by the authority of the King.

But they could not readily conceive how this could be done by the people themselves, and so it came to be said that the people needed protection against their own worst enemies, themselves. And great fears were entertained, that a government by the people would have none of the properties of a good government, that it would neither have any stability nor render the citizens secure in the enjoyment of their rights. And these views and these fears were expressed, until the Constitution of the United States was adopted.

The reader has seen that the first Constitution of Pennsylvania was formed twelve years before this, when the first attempt was made to form a civil government, founded on the sovereignty of the people, and when, as before remarked, great fears were entertained that such a government would prove a failure. All their ideas of civil government had been formed, by witnessing the operation of those governments, where the people had been governed by some man or body of men raised to a high rank above them, and in whom was vested the power, and consequently the sovereign right to govern. And they could not readily con-

ceive how the people could be all at once transformed from subjects into sovereigns; it seemed like letting the people loose upon themselves. And their fears were greatly increased by the erroneous opinion then prevailing, that the powers of the Legislature could not be restricted—that all their acts, however repugnant to the Constitution, would have the force of laws. Fears were also entertained that the people would be so fickle, that no permanent government could be maintained. The framers of the Constitution were oppressed with these fears, and almost brought to a stand, when a plan was conceived and proposed for creating a power so long sought in vain, which was to control the Legislature, prevent all abuse of power, and, at the same time, keep the people at a respectful distance from their Constitution; and they break out in the triumphant language of the section, "in order that the freedom of this Commonwealth may be preserved inviolate forever, there shall be chosen by ballot, &c." Through the whole section, we find the language of a man who, in the prosecution of a hazardous enterprise, on the successful issue of which, he had risked his whole fortune, had met with obstacles in his way, which had appeared insurmountable, and who af-

ter a long and doubtful struggle had removed them all, and is exulting in his unexpected success. It being the great object to create a high controlling power, they make a free use of the word authority, "they shall have authority to pass public censures, and to recommend to the Legislature the repealing of such laws," &c. They did not make it the duty of the Council to pass public censures, if they should find anything censureable in the administration of the government; this would have appeared to them but feeble language, illy adapted to create that high power which they had in view. By neither of the clauses of the section above recited, is the least power conferred upon the Council. The same is the case with the clause which authorizes the Council to order impeachments, for the Council had no power to enforce the order. The framers of the Constitution then must have relied on the great moral power with which they had invested the Council, and yet, experience has shown that they have been entirely powerless, they have not had as a body the least power whatever; not because it has been composed of uninfluential men, far from it; we have generally had in the Council men of the highest standing, men of great person-

al influence; but it arose from the constitution of the Council itself, composed of a small number possessing no power whatever. It is necessarily so with all political bodies; reduce their numbers and their influence is lessened, unless their power be augmented, as in the case of our old Council, as it is termed, a body composed of about the same number of the Council of Censors. They possessed just power enough, occasionally to disturb the house of Representatives in their career of legislation. The members of the House looked upon the Council as an inferior body. These feelings were more and more manifest, until it was observed that when the Governor and Council entered the Representatives Hall, the members would speak contemptuously of the Governor and his team. On the other hand, in those States where the whole power of appointment is vested in the Governor and four or five Councillors, these small bodies are highly respectable and influential, because vested with important powers.

Sensible of their want of power to correct the administration of the government by public censures, the Councils have generally omitted this part of their duty; they have occasionally recommended to the Legislature the repealing of uncon-

stitutional acts, but as we have before seen, this is utterly useless, and but one order for an impeachment has been made. At the October session of the Legislature in 1799, the Council of Censors ordered the house of representatives to impeach a sheriff, for taking illegal fees. The Council held that the House were bound to impeach the sheriff, charging him with the mal-feasance contained in the order, without evidence. The House put a very different construction upon the Constitution; they considered themselves as the grand inquest of the State, and that an impeachment before them was in the nature of a bill of indictment before a grand jury, and the order of the Council made it their duty to send for the evidence, and to decide whether it was sufficient to support the charge. They accordingly sent for the evidence, and finding it insufficient, dismissed the order. This was in high party times, and the question was made a party question, and of course the decision is entitled to no weight as a precedent; it is difficult, however, to put any other rational construction upon the Constitution. With respect to the practical operation of the clauses of the section above recited, it is sufficient to observe that they have been rather useless than injurious. I

wish the same could be said with respect to the remaining part of the section, providing a mode of amending the Constitution, but this cannot be said with truth. For it has proved expensive beyond all example; we have had ten Councils of Censors at an expense of between 1400 and 1500 dollars each, and eight Conventions, including the one now called, at an expense of between 5 and 6000 dollars each. Nothing like this is to be found in any other State. Some of the States have never had any Convention to amend their Constitution, and no one has had more than three. Whence this difference? Is it because the people of Vermont are more restless and uneasy than the people of other States, and are therefore, more disposed to be constantly altering their Constitution? No one will admit this, but every one who will pay the least attention to the subject, will perceive that it has arisen from our absurd provision, for the election of a Council periodically at the end of every seven years, whose duty it is to tax their ingenuity in devising some amendments to the Constitution, to supply defects which the people had never discovered. In every other State the Constitution remains undisturbed, until the people become dissatisfied with it, and, in some

form, express a desire to have it amended. We have seen in what manner the State of Pennsylvania proceeded in amending their Constitution: the people were dissatisfied with it, and the dissatisfaction was of course represented in the Legislature, and they referred to the people the question whether a Convention should be called to amend the Constitution:—that a Convention was called and a new Constitution formed. That the people expressed no dissatisfaction with this Constitution till the year 1825, when the Legislature again referred the question to the people, whether a Convention should be called, and they decided against it. Now here the question was decided by the people themselves, without any expense, and, if in any such case, the people decide in favor of a Convention, the presumption is, that their representatives in the Convention will amend the Constitution agreeably to their wishes. Accordingly, in the other States, where no attempt was made to amend the Constitution until the people express a wish for it, I cannot find that a Convention has ever failed to amend it agreeably to the wishes of the people, whereas most of our Conventions have been abortive. Indeed, since the year 1786, no amendment of any importance has

been made, except that constituting the Senate.

This has not resulted solely, from the calling of conventions periodically, while the people are satisfied with the Constitution, and do not wish to have it amended, but, in part from the restricted powers of the convention.

When the people, from every part of the State, meet in Convention to consider of any proposed amendment to the Constitution, different opinions will at once be manifested, and the necessity of acting in a spirit of compromise will be perceived. And when any one finds that a majority of the Convention cannot be brought to coincide with his views, he will modify his own individual opinion, and join in support of the amendment, with such modifications, as will render it acceptable to a majority, if he shall judge that the amendment so modified will improve the Constitution. Thus the individual wills of the members are modified and reconciled, and the will of a majority of the people prevails as far as practicable. But the members of our Conventions are deprived of the privilege of acting in a spirit of compromise, if they are so fortunate as to be actuated by it.

Many cases have occurred, showing the inconvenience, not to say the absurdity of our mode of

amending the Constitution. I will notice only the following. The Council of Censors elected in 1834, proposed the following amendment to the Constitution: "Sheriffs and High Bailiffs shall be elected by the freemen of their respective Counties, and shall hold their offices for the term of three years; and sheriffs shall not be re-eligible to the same office, during the three years next following the term for which they shall have been elected." When the amendment was discussed, it was soon found, that, as the convention was compelled to swallow the whole, or throw it away, the amendment could not be adopted. Many members were anxious to have sheriffs elected by the people, but would not consent that they should hold their offices for more than one year. Others wished to have them hold their offices for three years, but could not consent to have them elected by the people. Others wished sheriffs to be elected by the people for three years, and that the people should be at liberty to elect the same individual triennially, so long as they should find him capable, honest and faithful; they would place no restrictions upon the people in their elections; and the amendment was rejected.

The same may be the fate of an amendment

proposed by the last Council of Censors. The proposition is to give to each town, containing 25,00 inhabitants, two representatives, and an additional representative,for every additional number of 1500 inhabitants. Now supposing there be a majority in the convention in favor of increasing the number of members in our House of Representatives, by giving additional members to large towns, many of this majority may oppose the amendment on the ground that the mean increasing number, for an additional representative, should be at least twice 1500, and the amendment may be rejected. Whereas if the Convention were at liberty to discuss the subject, and in a spirit of compromise to reconcile their different opinions, which on such a subject must in the outset be extremely variant, the amendment might be adopted.

No other State excepting New Hampshire has provided for a periodical attention to their Constitution. In that State they adopted a new Constitution in the year 1792, in which there is a provision, that at the expiration of every seventh year the people shall, at the annual election, vote on the question, whether a Convention shall be called to amend the Constitution, and whenever a majority of all the freemen of the State shall vote in

favor of it, a Convention shall be called by the Legislature. This provision effectually prevents all abortive attempts to amend the Constitution, and leaves it undisturbed until the people express a wish for its amendment. Accordingly, as the people have been satisfied with their Constitution, it has remained unaltered for fifty-seven years. This Constitution was formed after the people had been taught by experience that they were capable of self-government, and had acquired a high degree of confidence in our written constitutions. When the first Constitution of Pennsylvania was formed, in the year 1776, it was far otherwise; they were very fearful that the political machine which they had invented and constructed would prove a failure, and they were very sure that as often as once in seven years, at least, it would require a thorough over-hauling and extensive repairs. And it seems they had little confidence in those who were appointed to take charge of it; they therefore provided for the appointment of a board vested with ample authority, not only to scold the tenders, and advise them to take back any bad work which they had turned off, but to repair the machine itself, or rather to decide what repairs the people should be permitted to make.

This Council of Censors, by the Constitution of Pennsylvania, was elected by counties, so that all political parties had a voice in the election, but the section was so amended in framing our Constitution, as to provide for the election of the Council by a general ticket; by this, the minor political party are deprived of a voice in proposing amendments. The candidates for the Council are selected by a caucus of the dominant party, and the people are called upon to give their votes for the members of a Council of Censors, not because they have become dissatisfied with the Constitution and wish it amended, but because another Constitutional term of seven years has expired before they were aware of it. The consequence is, that very little interest is felt in the election, and but few votes are given; some vote because they have been accustomed to vote for their party candidates, and some because it is the business of the meeting to vote; but not one vote is given with reference to the sentiments of the person voted for, relative to amending the Constitution. The members of the Council, therefore, are in no sense the representatives of the people, but the caucus candidates are elected. I say this because the three last Councils have been thus elected,

and the two first of them proposed amendments to the Constitution and called Conventions to consider them. Now it is quite natural that the minor party, who have been thus proscribed and deprived of a voice in proposing amendments, should look upon them with great disfavor. And either because many candid and high-minded men of both political parties have been disgusted with this very exceptional mode of proceeding in selecting the Council, or because the minor party have been more active and have more generally attended the meetings, that party have had a majority in the Conventions. This was the case in both of the two last Conventions; and in the Convention of 1836, the amendment constituting a Senate came near being lost by this absurd mode of proceeding. The democratic party, for the reasons above stated, were generally opposed to the amendment, and it would have been lost, had it not been supported by several high-minded members of that party, who preferred the public good to party interest. By their influence the amendment was adopted by a majority of three. But the amendment was again put in jeopardy by the desertion of two other men of that party, both of whom had voted for the amendment, and one other member,

who had voted for the amendment, being necessarily absent, a change of the votes would give a majority of two against the amendment; they, therefore, full of confidence that they should succeed, moved a reconsideration of the vote. Their surprise and mortification at the result may be readily conceived: a majority of nine against a reconsideration of the vote. This change of votes in the Convention was accounted for at the time.

When the members of the Convention were chosen, for the reasons which have been stated, in many of the larger towns, but fifteen or twenty attended the meeting, and having experienced no evils from the existing Constitution, were opposed to any alteration of it, and instructed their delegates to vote against any amendment of it. When the vote was taken on the motion to reconsider, several of the members who had voted against the amendment in obedience to their instructions, had become anxious for its adoption, and said that the sense of the Convention had been fairly taken, and they should vote against the resolution.

But the most weighty objection to this provision is, that when the people meet in Convention to amend their Constitution, they are restricted in the exercise of their primitive sovereignty.

When we say that the people have at all times a right to reform or alter their Constitution, we mean that they have a right to do this by their representatives in Convention.

But by this provision we have restricted the people to the simple adoption or rejection of the amendments proposed by the Council. The framers of this section in the Constitution had lived under the charter of Governor Penn, which restricted the legislative power of the General Assembly to the passing of such bills as should be laid before them by the Governor and Council. Although this restriction had become extremely odious to the people of Pennsylvania, as they felt it to be an unnecessary and gross violation of the rights of the people, yet, as they considered it to be absolutely necessary to restrict the people in the exercise of their political Legislation, in amending the Constitution, they very naturally restricted them in the same manner in which Governor Penn restricted the General Assembly—they restricted the power of the people, when assembled in Convention to amend the Constitution, to the simple adoption or rejection of such amendments as should be laid before them by the Council of Censors. This is as unexampled as it is absurd.

In no other State is a Convention called to amend the Constitution laid under any restrictions whatever, but the whole Constitution is open to amendment.

The following is the mode of amending the Constitution in Kentucky. The Legislature pass an act specifying certain amendments to the Constitution, which is published, and the question is referred to the people whether a Convention shall be called to amend the Constitution, and if there be a majority of the freemen of the State in favor of a Convention, the same shall be repeated the next year, and if a majority of all the freemen of the State again vote for it, a Convention shall be called. Now since such amendments are framed by the Legislature, in which the people are represented as fully, and in the same manner as they are in a Convention called to amend the Constitution, if the Convention were restricted to the adoption or rejection of such proposed amendments, (and objection to it would seem rather technical than solid,) yet in framing their Constitution, they considered a Convention, the members of which were elected by the people in the exercise of their primitive sovereignty as the people themselves, and that the powers of the Convention

could not be restricted but must be the same as were the powers of the Convention which formed the Constitution. I have said that none of the States have laid any restrictions upon a Convention called to amend the Constitution, but some of the States have dispensed with Conventions altogether.

In some of the States, slaveholders, conscious that slavery is held in utter abhorrence, as a gross violation of the natural rights of man, and that every opportunity will be seized to abolish it, have taxed their ingenuity to erect some constitutional barrier against it. Take the Constitution of Missouri as an instance: The Constitution of that State, as of all other slave-states, prohibits the abolition of slavery by the Legislature, without the consent of the owners, and the following is the mode provided for amending the Constitution of Missouri. "The legislature may at any time propose such amendments to the Constitution as two thirds of each House shall deem expedient, which shall be published in all the newspapers published in the State, three several times at least, twelve months before the next general election.* And if at the first session of the Gener-

*The Legislature of Missouri meets biennially.

al Assembly after such general election, two thirds of both Houses shall by yeas and nays ratify such proposed amendments, they shall be valid to all intents and purposes, as parts of this Constitution."

This it was supposed would secure the power of the master over the slave, and render it perpetual. But in this they will be disappointed. For whenever there shall be a decided majority of the people of the State in favor of abolishing slavery, an act will be passed by a majority of the legislature, referring to the people the question whether a Convention shall be called to amend the Constitution—a Convention will be called—the Constitution amended—and slavery will be abolished.

When the people of Missouri met in Convention and framed their Constitution, a majority of necessity governed, and they acted under no restrictions, but as sovereigns; and the people of Missouri are in possession of the same absolute sovereignty, and when again called into exercise in amending their Constitution, a majority must govern. To admit that the sovereignty of the people can be restricted by the Constitution, is an admission that it may be made unalterable, which is absurd. The people, by reason of a

difference in their condition, temperament and habits, are divided into two parties, the progressive party and the conservative party. The former, being dissatisfied with their condition, are zealous and active in their efforts to change and improve it. The conservatives, on the other hand, being satisfied with their condition, stand braced against any attempted changes. The latter have the force of habit on their side, which enables them to make a stand against the greater order and activity of their assailants, so that neither can obtain a complete victory. This is fortunate, for like all political parties, by their contentions, a repulsion is created between them, and they become ultra on both sides, being equally distant from that middle course which calm reflection and common sense would dictate. But no conservative has ever become so ultra as to contend, that either the organic law, the constitution, or the municipal law should be made unalterable—for this would prevent all progress—all improvement, so that neither law could from time to time be adapted to the existing condition of the people, or be made such as to meet their approbation, and it has been well said, that it is, perhaps, of as much importance, in general, that the people should see and

acknowledge the laws to be wise and good, as it is that they should be really wise and good. This subject may be further illustrated in few words. The people are at all times the sovereign political legislature of the State, vested with full power to pass all organic laws, all laws relating to the Constitution, and cannot be bound by any prior acts of the same legislature. It is obvious, then, that the mode which was pursued in Pennsylvania, in amending their Constitution, was so far from being revolutionary, that it was founded on the great conservative principle, that the political sovereignty of the people must continue absolute, and that their power of political legislation cannot be even temporarily suspended by themselves. If it be said that the Constitution of the United States cannot be amended by a bare majority, but a majority of three fourths of the States is required to amend it; in answer to this, it is sufficient to observe that there is no analogy between the Constitution of the United States, and the Constitution of a State. The Constitution of the United States is so far a compact between independent States as to render such restrictions necessary and proper. But, although when the people are in the exercise of their primitive sovereignty, in framing or

amending their Constitution, a majority must govern, yet they may so frame their organic laws, as to require a majority of two thirds, or any greater proportion of the public functionaries to concur, to render their acts valid. This, however, is not in accordance with the principles of our institutions. It will be more clearly seen hereafter, that the strength of the government consists in having all measures supported by a majority.

On this subject of amending the Constitution, we find the following in Chipman's Principles of Government :

"That the people may constitutionally exercise their powers of political legislation, it must be provided that they shall, by their representatives elected for that purpose, meet in convention, on the call of the ordinary legislature ; or the legislature may be authorized to make proposals of amendment of the constitution to the people, to be ratified or rejected in their primary assemblies. Nor can the legislature, composed of members from every part of the state, fail of knowing and being influenced by the sentiments of the people on the expediency of such a measure. Some states have authorized the ordinary legislature to make any amendment of the constitution by their own act ; but requiring a greater degree of unanimity than in common cases, and that before its final adoption it shall be passed by two successive sessions, that a new election of representatives may

intervene, who, it is supposed, will have learned and will be actuated by the sentiments of the people on the proposed amendment. But this must be considered, in a measure, a departure from the principles of the government; as it confounds the several powers of legisiation, and, in a degree, the obligation of the political and civil laws, which, as they are distinct in their nature, ought to be kept in a distinct view. It seems highly expedient that every amendment to be laid before the people for their consideration, should be passed with the same caution, and the same delay, that it may be maturely considered before its final adoption. Indeed, none but simple propositions ought to be submitted in this way. The people in their primary assemblies are incapable of discussing intricate questions. All amendments, alterations, and changes of the constitution that require a deliberate discussion in order to a proper adjustment, ought to be referred to a convention of the people, by their representatives chosen for that special purpose, where they may meet a full and fair discussion, and be adopted or rejected on mature deliberation."*

*When we speak of the people as the political legislators of the State, we have referred to the manner in which the people of the American States have exercised the powers of government. Instead of exercising the power of civil legislation, as in a pure democracy, they have usually exercised the power of political legislation, in forming constitutions, instituting governments vested with the whole power of civil legislation, by which they have divested themselves of this power, until they again meet, and, in the exercise of their power of political legislation, alter or abolish the Constitution; hence the people are termed the political legislators of the State.

It appears that, in writing his Principles of Government, the author did not advert to the question whether the political sovereignty of the people can in any way be limited or restricted. And yet, on an examination of his whole work, we find every part of it consistent with the principle that the people, being the sovereign legislature of the State, must necessarily be free to act in relation to their organic law—the Constitution—without any restrictions whatever. I have the means of knowing that he adopted this principle, and the reader will be satisfied that I am correct in this, from the following extract of a letter of his, dated 20th Dec. 1842:

"I am glad that you have undertaken an examination of the last article in our constitution, providing for the election of a Council of Censors, periodically, at the expiration of every term of seven years, vested with certain powers, and among others, that of proposing amendments to the Constitution, and calling a Convention to act on their specific propositions. As to their censorial powers, I have always considered them a mere

But when they thus meet, their powers of civil and political legislation are altogether unlimited and supreme. And in framing the State Constitution, they have exercised the power of civil legislation, to a greater or less extent. As an instance of this, see the 31st section in our frame of government: "All deeds and other conveyances of land shall be recorded in the town clerk's office in the respective towns." This is purely civil legislation.

nose of wax, and the impropriety, not to say absurdity, of the provision, which compels the representatives of the people, in convention, to work in trammels, confining them to the adoption or rejection of each article proposed, without the least alteration, is very apparent. I wish I could write you more fully on this subject, but I have so nearly lost my eye-sight that writing, as you will perceive by this, has become extremely difficult."

We have seen that the people of Pennsylvania had a great dislike to the provision for amending the Constitution through a Council of Consors. They looked upon it as the tree of evil, for its fruits were bitter, and they constantly assailed it from the very day it was planted, and so loosened its roots that it died, and before the end of the second septennary it rotted and fell, when there was not a breath of air to move it. But when the only tree of the same family was planted in Vermont, it was a great favorite with the people, they mistook it for the tree of liberty, for whoever looked upon it was assured that it would preserve the freedom of this Commonwealth inviolate forever. And it has remained so long undisturbed —its roots have struck so deep in the earth, that it will require the whole strength of the people to remove it.

I will close this chapter with a single remark, that it would be more modest, if not more wise, to pay some deference to the opinion of all our sister States, than to assume that we have all the wisdom, and that it will die with us.

CHAPTER VII.

Little regard paid to the Constitution in the first Septenary. —Address of the Council of Censors to the people, at the close of their deliberations.

In stating the alterations which were made in the first Constitution of Pennsylvania, in framing the Constitution of Vermont, I have given a general view of the course of legislation during the first septennary. No particular regard was paid to the Constitution. This was fortunate for the State, for if it had been understood that the Constitution was the supreme law, and that the power of legislation was limited by it, the government might not have been sustained. Gov. Chittenden, as has been seen, had a remarkable tact in adapting his measures to the existing state of things, and he was but very little disturbed by

any constitutional restrictions. Judge Chipman, who came into the State soon after the government was organized, a young lawyer, and of course somewhat technical, did not in all cases approve of the course pursued by Gov. Chittenden; but he too was distinguished for his capacity in adapting legislation to the condition of the people, as he was afterwards distinguished as a judge, in adapting the law to the justice of the case before him, and generally acted with Gov. Chittenden.

He supported the quieting act so called, after its details were so amended as to do equal justice to land owners and settlers. And after the State had been carried through these troublous times and become one of the United States of America, I have often heard Judge Chipman remark that he did not believe the government would have been sustained, had any man but Gov. Chittenden been at the head of it.

At the close of the first septennary, the following persons were elected members of the Council of Censors: Lewis Bebee, Jona. Brace, Benjamin Carpenter, Ebenezer Curtis, Jona. Hunt, Stephen Jacobs, Ebenezer Marvin, Increase Mosely, Elijah Robinson, John Sessions, Micah Townsend and Ebenezer Walbridge. The Coun-

cil examined the proceedings of the legislature, of which they gave a detailed account in an able address to the people.

They proposed amendments to the Constitution, a number of which were adopted by the Convention, holden at Manchester, in June, 1786, and the whole Constitution, as amended, was established and published with the revised laws of 1787. It is also contained in a volume of the Laws, published by Anthony Haswell, in 1791, and the reader may compare the amended Constitution with the first contained in this volume, and ascertain what amendments were made. Instead, therefore, of occupying the space necessary to give all the amendments in detail, I insert the above named address to the people, as it contains a history of our legislation, during the septennary.

ADDRESS

OF THE COUNCIL OF CENSORS.

To the Freemen of the State of Vermont:

YOUR Council of Censors, elected agreeably to the XLIVth section of the Constitution, after having maturely considered the Frame of Government which has been the rule of political conduct for the inhabitants of this State, the last

septenary; highly approving the principal part of it; with the greatest diffidence of their own judgment, and respect for the patriotism and abilities possessed by the formers of the present Constitution, have proposed certain alterations, heretofore offered to your consideration. In so doing, we principally had in view rendering government less expensive, and more wise and energetic; objects, in the opinion of this Council, more especially during the infancy of a Commonwealth, worthy the attention of its freemen. The taxes which have been collected some years past for the support of government, demonstrate the expediency of the former; and every man's observation will suggest to him the necessity, for our political happiness and credit, of having government properly maintained, and the judicial and executive offices therein, filled by persons of the greatest wisdom and virtue.

In the proposed alterations, we endeavored to guard, in future, against what is esteemed by this Council (our circumstances considered) to have been an error in the Constitution—electing persons to judicial and executive trusts, during good behavior: as it invested them with estates in their offices, which, without an alteration of the Frame of Government, cannot be legally taken from them, but by proving, in a judicial course of proceeding, instances of mal-administration. We therefore left it in the power of the Governor, Council, and Assembly, (whom we view in the present condition of the State, to be most competent to the election of judicial, and the several

executive officers, which, in the proposed alterations, they are authorized to choose,) annually to leave out any one who shall be found unequal to, or otherwise improper for, his trust, and appoint a more suitable person in his place. But this Council is not without hope that the ensuing septenary will furnish men so adequate to those offices, that the tenure of them may, consistent with the public interest, be put upon a more stable footing.

We also endeavored, after the example of some other States, to guard against the further introduction of an aristocratic power, destructive of the common weal, by providing that the same person should not, at one time, be invested with too many important offices, especially where one would be a hindrance to his properly discharging the duties of the other. And likewise to prevent any family, or party, in future, having it in their power to establish a set of connexions, prejudicial to the community, by providing that certain officers, of the greatest influence and importance, should, at stated periods, be reduced to the common level ; and by being thus constantly reminded of their political mortality, be induced to act well their parts while on the stage.

This Council proposed for your option two plans for electing Councillors and Representatives in Assembly, each differing from the mode now in use, but one of them necessarily consequent to the design of reducing the number: if either meets with your approbation, we shall be happy; yet cannot but wish the choice of Representatives in a

county convention may have a trial for one septenary.

In reviewing the proceedings of the legislative and executive branches of government, and examining whether they have performed their duty, "as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they were entitled to by the Constitution," it affords us great pleasure to find matters of commendation, yet accompanied with the mortification of having some to censure. But as the Constitution has allotted us solely, the last, and more unpleasing task, we can only in general observe, that, under God, this commonwealth is much indebted, even for its present existence as a separate community, to that undaunted firmness, and prudent vigilance for the public safety, which has been usually maintained in the legislative and executive departments, since the era of our independence. At open war with the most potent nation in Europe;—frequently threatened with invasions from a sister State, and, by her insidious arts, a powerful disaffection fomented within the bowels of this commonwealth—denied relief from the authority who alone, under Heaven, could give it;—we have reason to look up, with gratitude, to that Being who is wisdom, and by whom a few husbandmen, unexperienced in the arts of governing, have been enabled to pilot the ship through storms and quicksands, into the haven of independence and safety; and to admire, when we consider how much was to be done, and by whom, that it has been so well done.

But we are obliged to check such agreeable thoughts, and however irksome to our feelings, turn our attention to the province allotted us; censuring such unconstitutional proceedings as may be drawn into precedent, if left unnoticed.

We would premise in the words of Judge Blackstone, that, "in all tyrannical governments, the right both of making and enforcing the laws, is vested in one and the same man, or one and the same body of men, and wherever these two powers are united together, there can be no public liberty." The convention who framed the Constitution of this State, aware of this, by a decided distribution of power, assigned the legislative authority to the Representatives of the people in General Assembly, and the supreme executive, to the Governor and Council; and from the last, again severed the judicial, and rendered it independent of both. And to preserve this balance of power, thus carefully made, and guard against any encroachment of one on the proper authority of either of the other, the convention made it the duty of the Council of Censors to inquire, "whether the legislative and executive branches of government have assumed to themselves, or exercised, other or greater powers than they are entitled to by the Constitution."

In how many soever instances, therefore, the legislative and executive authorities have transgressed the limits marked out to them by the Constitution, and intruded upon the province allotted to the other, (whatever temporary reasons they might have for so doing,) they are certainly, in

those particulars, deserving of severe censure, as such conduct, from persons entrusted with the important charge of making and executing laws, (by trampling upon the fundamentals of government, which ought to be held sacred,) naturally tends to introduce tyranny on the one hand, or anarchy on the other.

In some instances, however, it is probable that the Constitution has been invaded through necessity, in times of extreme danger, when good men were induced to hazard all consequences for the sake of preserving our existence as a people; yet in a review of these proceedings, we have thought proper to advert even to such branches of the Constitution, lest they should be made use of as precedents when no such necessity shall exist.

Some instances of the Council's assuming power not delegated to them, we now proceed to select from their journal.

On the 17th June, and 20th October, 1778, they take the very extraordinary step of divorcing Laurania M'Clane, and Ruth Chamberlin, from their respective husbands, and declaring their right of marrying again.

On the 14th November, 1781, they resolve that Doctor John Page be remitted one fourth part of the debt due from him to Colonel William Marsh, on account of his debts being contracted in Continental money. It is to be observed that the debts of Colonel Marsh, by the confiscation of his estate, had, before that time, become the property of this commonwealth; and that in April, 1781, the law fixing a general scale of depreciation for

all debts contracted in Continental money, had passed. Why then, Doctor Page should be made an exception to the general rule, or from whence the authority was derived, that, in this instance, altered or dispensed with the operation of the law, we are left in the dark.

In the several acts of the Legislature respecting the survey of the town lines, the Governor and Council are, in the opinion of the Board, invested with the sole power and trust of adjusting the accounts of the several persons employed in running those lines: yet we find that in March, 1784, the Council resolve, "That the Surveyor-General settle the accounts of the several Surveyors under his direction, for their services in running town lines, and draw orders therefor, or for the payment thereof, on the hard money tax."

This (however respectable the character of the Surveyor-General may be) appears to this Council to have been delegating a trust, committed to them solely to execute, and into very unsuitable hands, as it effectually destroyed the check intended by the Legislature upon the Surveyor's department. And in the view of this Council, it was a disposition of the public money not intended or authorized by the Legislature, as ample provision appears to have been made by law for compelling the proprietors and inhabitants of the several towns to defray the expense of those surveys.

On the 15th February, 1782, the Legislature enacted, "that all public acts, papers and records

that belong to the State (excepting the particular records and papers of the Council) be deposited and remain in the hands of the Secretary of State." "That he attest and register charters of incorporation, grant copies of all records," &c. On the 10th of March, 1784, the Council resolve, "that the Secretary of Council keep in his office, all the records, and copies of charter of lands granted previous to October, 1781;" and that, "on account of the disputes respecting bounds of townships, which may occasion the alteration of some charters already given, he be directed not to record any more charters, till the further order of Council."

How the Secretary of State, and Secretary of the Council, can both, at the same time, possess the records of charters granted previous to October, 1781; or from whence the Council derive their power to alter or contravene acts of the Legislature, when it is by the Constitution made a principal part of their duty to see them faithfully executed, is beyond our comprehension: nor do we readily conceive in what manner charters already completed, can, with propriety, suffer an alteration.

On the 9th March, 1784, the General Assembly, in order to facilitate what had been so long and ardently wished for by them, and every good subject of this State, a final settlement of the public accounts, to enable the auditors to detect embezzlements (if any) and the Legislature to provide for debts due from confiscated estates; made it the duty of the auditors to call on all per-

sons who had acted in the capacity of commissioners of sequestration, &c., for such books, bonds, deeds, notes, and papers, as had come to their possession by virtue of their appointment; and the said books and papers to inspect, examine, and liquidate; and to record in proper books, the estates, real and personal, which had been confiscated; specifying which had been sold, by whom, and whose order, and the several amounts in real value. And if the person possessed of any such public papers, should neglect to deliver them to the auditors, after demand made by them in writing for that purpose, he was, by said act, to forfeit a sum, not exceeding twenty-five thousand pounds.

The auditors having (as this Council is informed) make such demand in writing, of the Honorable John Fasset, Esq., for the papers in his custody as commissioner of sequestration and sales, and he having refused delivering them agreeable to the demand, the auditors directed a suit to be commenced against him for the penalty contained in the act. Subsequent to which, (we do not assert it was done with the view of embarrassing the auditors in the performance of their duty, or of screening one of their members, but it had this effect,) on the 16th of October, 1784, the Council received papers of this kind from Mr. Fasset, (by him declared on oath to be the whole, to the best of his knowledge and remembrance,) which had come to his hands as commissioner of sequestration, and discharged him therefrom accordingly. Of this transaction, (although a quorum of

the auditors were then, and for thirteen days after, at the place where the Council sat,) the auditors were kept in profound ignorance; and if the uncommon severity of the season had not prevented, the sheriff would have served their writ upon Judge Fassett some time after he was discharged from the papers by the Council. How the auditors are now to come to those papers, time must discover.

It appears from the journal of Assembly, that in February session, 1782, a grant was made to John Wheeler and his associates, of a gore of land adjoining Lunenburgh; but difficulties having occurred in ascertaining the precise local situation of Lunenburgh, it appears from the journal of Council, that a charter was directed to be made out on the 28th of October last, of another gore, in lieu of the former, but without a previous grant being made by the Assembly. This proceeding being so evident an infringement upon the power vested in the Assembly, and at so late a period, calls for the severest censure of the freemen, and of this Council.

We now beg your attention in a retrospective view of such acts of the Legislature as we have selected for that purpose, some of which are of general concern, and very important in their consequences, while the operation of others is confined within narrow limits, and scarcely worthy public notice for any other reason than lest they be drawn into precedent.

We would previously observe, in the words of the great Mr. Locke, who, speaking of legislative

power, lays it down as the fundamental law of all commonwealths, "that the legislative cannot assume to itself a power to rule by extemporary and arbitrary decrees, but is bound to dispense law and justice, and to decide the rights of the subject by promulgated, standing laws, and known authorized judges. And that men give up their natural independence to society, with this trust, that they shall be governed by known laws; otherwise their peace, quiet, and propriety, will be in the same uncertainty as in a state of nature."

The first act of legislation we shall notice, is the last clause of a statute passed 23d February, 1779, entitled, "An act making the laws of this State temporary;" by which it is enacted, "That no court or justice, shall take cognizance of any matter or thing, in which the title of land is concerned, or in any action of contract, where the parties appear to have made a bargain or contract, by note, bond, debts, or agreement in writing, or otherwise; any act or law to the contrary notwithstanding." This statute, together with those other passed from time to time, prohibiting the trial of the titles to land, appears to this Council to militate against the ninth article in the Bill of Rights, which is expressive of the design of forming social compacts, viz.: "That every member of society hath a right to be protected in the enjoyment of life, liberty, and property,"—against the thirteenth article in the Bill of Rights, "That, in controversies respecting property, and in suits between man and man, the parties have a right to a trial by jury, which ought to be held sacred:"

and also against these words of the XXIIId section in the Frame of Government,—"All courts shall be open, and justice shall be impartially administered, without corruption or unnecessary delay."

We would ask how property is to be legally protected, if not by the several courts of justice, according to the known laws of the land? How parties can be said to enjoy their right of trial by jury, when the Legislature prohibits a trial of any kind? And how courts can with propriety be called open, within the meaning of the Constitution, or justice be administered therein impartially without unnecessary delay, when they are disenabled to take cognizance of any matter wherein the title of land is concerned, and of any action founded upon a contract; which are nine tenths of the causes where justice is sought? How far the singular condition of real property within this commonwealth, and our peculiar political situation, ought to extenuate shutting the courts of justice with respect to landed property, is with you to decide: but a Legislature's preventing suits being brought upon all private contracts, is an unheard of transaction, and one which we presume will not be accounted for by the impartial world, and by posterity, upon principles very honorable to the promoters of it.

The laws to prohibit the judicial courts trying land titles, above alluded to, passed 22d October, 1779,—8th November, 1780,—5th March, 1784, and 29th October, 1784.

The act passed by the Legislature on the 22d

of October, 1779, "appointing commissioners for the better regulating titles of land within this State, and declaring their power," (although this Council is not informed that any trials in pursuance of it have been completed,) ought not to escape your notice.

This act appoints five persons, commissioners, any three of whom are empowered to take into consideration, and fully examine, all the evidence relating to, or respecting, the title of controverted lands in this State: to sends for persons; to administer oaths; to call upon the parties for charters, patents, deeds of conveyances, &c. to examine the parties upon oath. And they were to make report to the Assembly, at their next session in October, which of the various claimants to the same land, ought, *in justice and equity*, to possess, and forever hold the fee of, said land, &c. The act prescribes a mode of process for convening the parties, makes provision for hearing them for and against the report of the commissioners, and declares, that the resolution of the Assembly thereupon (when recorded) shall be an indisputable title to the lands, against all parties in the trial.

It is very useful for all public bodies, whether consisting of one, or many natural ones, whose power is short of despotic, to wish for an increase of it; and to aim at that object as invariable as the needle, without obstruction, points to the pole. Here was an extensive grasp at the agreeable desideratum of uncontrolled dominion: trials by jury, in the most important disputes concerning

property, wholly thrown aside: the Legislature assuming to themselves the judicial power, so far as respected all the permanent property in the State, and casting aside all restraints of law in their decisions, they were to determine every cause, without being shackled with rules, but by their crude notions of equity; or in other words, according to their sovereign will and pleasure; by which means, all the landed interests in the commonwealth (which, in other nations and States, has constantly been viewed as sure and permanent to the owner) would be at the disposal of the legislators, and the surest title to an estate in Vermont would be the favor of its assembly: and this chain of adamant would be effectually riveted, as redress (without a dissolution of government) could not be expected; none but the Legislature, whose interest it would be to withhold it, being competent to give it.

What means were made use of by a kind overruling providence to prevent this law being carried into execution we have not learned, but have much reason to be grateful for the event.

The last preceding observations render it unnecessary to say any thing more respecting an act passed October 22d, 1779, entitled, "An act constituting the superior court of equity, and declaring their power;" and an act passed 22d February, 1781, "For quieting disputes concerning landed property;" than that they appear to have originated from the same source; and were designed to exalt the legislative, at the expense of the judicial department; as the former gives

the Governor, Council, and Assembly, the powers of a court of chancery, in all causes exceeding four thousand pounds consequence, and the latter erects them into a court for the decision of all disputes between proprietors holding under different charters issued by the same authority.

The several statutes passed for obliging creditors to accept the produce of the country, in lieu of money, are also considered by this Council as violations of that protection, which, by the general and fundamental laws of society, and by the ninth article in the Bill of Rights above mentioned, every individual has a right to expect for his property, upon his entering into civil society. We leave them however, (if that can be the case,) to be justified by the extremity of the times, and hope for better, when such expedients shall be thought unnecessary.

The act alluded to in the last preceding observation, passed 21st June, 1782; and 25th February, 1783.

The act to suspend prosecutions against Joseph Farnsworth, Esq., passed 29th October, 1784, is also esteemed by this Council to merit the serious attention of the freemen of a commonwealth, which has yet a character to gain amongst the kingdoms and States of the earth. It declared, "That no actions should be commenced, prosecuted, or proceeded in, against Joseph Farnsworth, Esq., commissary-general of purchases, for contracts made by him in his public capacity, as commissary-general, until the rising of the Legislature in October then next."

It is the undoubted duty of the Legislature, when there is an absolute necessity of substituting credit for money, to do it with as much caution as a prudent man would in his private affairs; and as carefully to guard against a diminution of that credit, by providing means of payment at the prefixed time, as a discreet merchant would in his mercantile transactions; and if a State is deficient in these prudential maxims, the odium ought to be proportionate to the magnitude of the consequences.

It is therefore, with real concern this Council observes, that so many precedents have been afforded of late years, in this western hemisphere, of breach of contracts made on behalf, and authority of, the public, as with many, in a great degree to sanctify the measure: and that, after proceeding from one delusion to another, it has terminated in the almost loss of public credit. And it is with equal satisfaction we have remarked that this State has, in general, shewn an honest disposition in fulfilling its contracts with individuals, so far as has been in the power of government, by paying them something of real value. This the Legislature has been enabled to perform, by levying taxes in some degree proportionate to the public expenses, and enforcing the collection of them: and if the exigences of the community have necessitated the contraction of debts, the good disposition manifested in discharging those debts, has preserved our public credit with individuals; and the trifling depreciation, which the public securities of this State have at times undergone, has pro-

ceeded rather from scarcity of specie, and the example of surrounding States, than a fear of their being redeemed at their original value.

The act above mentioned in favor of Mr. Farnsworth, is considered by this Council as one stride towards the destruction of that credit; and the more injurious to the persons interested, as they must have waited a considerable time upon the public, before passing this act. A few more legislative procrastinations would have taught individuals the folly of trusting their property *where the power and disposition to evade payment were united.*

It behooves the freemen, in the opinion of this Board, as a matter of the last importance, to keep a watchful eye over every step of government which tends to sap public credit, and to manifest their severest resentment thereat.

We cannot dissolve this Council of Censors, with the pleasing satisfaction of having conscientiously discharged the trust reposed in us, if we omit noticing (however disagreeable it may be to many influential persons in this commonwealth) a law passed by the Legislature in their last session, under the title of, "An act for settling disputes respecting landed property." This Council is of opinion, considering the various difficulties of coming to the knowledge of a title to lands in this commonwealth, which originated from, and have been cherished by, the contentions of different States claiming this territory, it is equitable that provision should be made by the Legislature, in favor of persons who made *bona fide* purchases

from pretended owners, while it was out of their power to know with certainty in whom the title was vested; (though we cannot agree in sentiment with the Legislature, that the defrauded purchasor should be allowed to recover his damages, both from his voucher and the owner of the soil.) But that trespassers, who have no pretence of a title, should by legislative authority, be enabled to recover from the legal owners, (who, in numberless instances, have been kept out of possession, sorely against their will, and to their great impoverishment,) the value of their improvements, is sanctifying iniquity by law; and, by a *post facto* act, depriving the owners of such property, of the right of action against the trespassers: (which remedy, when the intruder has done more injury than benefit to the farm, it is equitable the owner should have:) and it is giving a reward to persons for transgressing the laws. In whatever light this part of the act is viewed, it may truly be said to be unprecedented and unparalleled; and will, unless revised and materially altered, be an indelible blot in the annals of our history, afford our enemies the most solid argument they have yet offered against the reasonableness of our existence as a sovereign State, and be the greatest inducement to our friends to desert us, as having too much cunning, to hold the reins of an independent government.

We are sorry occasion is afforded for remark, that the Legislature, especially in the former part of the septenary, have in some instances deviated from the humane spirit manifested in the XXVIth

section of the Frame of Government; that by directing corporal punishment to be inflicted for offences not infamous in their natures, that chastisement is rendered less disgraceful to the delinquent, and less beneficial to society, where the crimes require it.

Nor ought the fickleness of the Legislature, and their want of deliberation in passing laws, to escape the observation of this Council. Few acts, of general concern, but have undergone alterations at the next session after the passing of them; and some of them at many different sessions: the revised laws have been altered—re-altered—made better—made worse; and kept in such a fluctuating position, that persons in civil commission scarce know what is law, or how to regulate their conduct in the determination of causes. If the Legislature in this particular have *intended* to be faithful guardians of the people, they have *acted* as very unsteady or improvident ones.

It is the opinion of this Council, that the General Assembly, in all the instances where they have vacated judgments, recovered in due course of law, (except where the particular circumstances of the case evidently made it necessary to grant a new trial,) have exercised a power not delegated, to them, by the Constitution. This mode of proceeding is an assumption of the judicial power in the last resort, and renders nugatory that important article in the Bill of Rights which provides, "That in all suits between man and man, the parties have *a right to a trial by jury, which ought to be held sacred.*" It supercedes

the necessity of any other law than the pleasure of the Assembly, and of any other court than themselves: for it is an imposition on the suitor, to give him the trouble of obtaining, after several expensive trials, a final judgment agreeably to the known established laws of the land; if the Legislature, by a sovereign act, can interfere, reverse the judgment, and decree in such manner, as they, unfettered by rules, shall think proper. If such is their constitutional authority, it would be a mercy to prohibit any other persons than themselves the exercise of judicial powers. The legislative body is, in truth, by no means competent to the determination of causes between party and party, nor was, by our Constitution, or that of any other country who make pretence to freedom, ever considered so (not taking into view the amazing expense it would bring upon the public, and the disadvantage of its engrossing that time which ought to be occupied in their more important and proper employment of legislating.)

If one set of men are to enact and execute our laws, and when they do not find one to answer a particular purpose, to make it, *instanter;* or in other words, if they are to possess all the authority as judges, which they, as legislators, are pleased, from time to time, to confer on themselves, unhappy indeed is the lot of this people.

The instances alluded to of judgments being vacated by legislative acts are as follows, viz., "An act to set aside, and render null and void in law, a certain order therein mentioned," passed 6th March, 1784; "An act to reverse the several

judgments therein mentioned," passed 9th March, 1784: "An act to secure Daniel Marsh in the possession of a certain farm, until he shall have opportunity of recovering his betterments, and nullifying several judgments rendered against him," passed 18th June, 1785: and, "An act confirming Andrew Graham, of Putney, in the county of Windham, in the quiet and peaceable possession of the farm on which he now lives, in said Putney; and rendering all judgments respecting the possession of the same, heretofore had and rendered, by any court of law whatever, null and void;" passed 18th June, 1785.

Similar to annulling judgments, is the power exercised of staying executions after judgments rendered; of which, in reviving the acts of legislation, we find two instances: one entitled, "An act to stay the execution on a judgment given by the superior court, against Witherly Wittum, Malachi Wittum, and Witherly Wittum, Jun., in favor of David Caswell and Thomas White," passed 25th February, 1782: the other passed March 8, 1784, entitled, "An act to stay an execution, and grant a sum of money for the purpose of paying and satisfying the said execution." [The title of this last act, it is to be observed, carries a greater shew than substance of equity in it: the State was obliged in honor, and by promise, to indemnify the defendants: the act, after judgment, constrained the creditor to take public securities at par, both for his damages, and a large bill of costs expended in the suit.]

Granting pardons by the Legislature, (except

in cases of impeachment, and perhaps in those of treason and murder,) is an evident infringement upon the constitutional prerogative of the executive Council, and as such, ought not to escape your notice. Yet we find this power exercised by the Assembly on the 26th of October, 1784, in the way of resolution (which was exceptionable for the mode, if on no other account) in the following words, viz.: "Resolved, that Lemuel Roberts, and Noel Potter, be, and they are hereby pardoned (on account of their former merit and present submission) for their offence against the peace and dignity of the freemen of this State, in being concerned in, and leading on in a riot, for rescuing one Carr, out of the hands of the Sheriff's deputy, some time in May last."

If the exercise of this power had been left in its constitutional channel, *former merit and present submission* might, perhaps, have been considered as proper reasons for mitigating the fines, but not for complete pardons, in crimes tending to the dissolution of government.

Although this Council conceives the check intended by the XIVth section of the Frame of Government, if carried into execution, to be very inconvenient in practice, and expensive to the State; yet, while the Constitution absolutely requires bills of a public nature to be printed for the consideration of the people, before they are passed into laws, we cannot esteem the legislature excusable in omitting it; and the notion of treating the general system of our statutes as temporary, we consider as an evasion of an article in the Consti-

tution, thought by the Convention to be of importance.

On the 28th of February, 1782, the Legislature passed a law, entitled, "An act empowering Colonel Samuel Robinson, to give a deed of the lands hereafter described, to the heirs of William Emms, deceased; and vacating a certain deed of the premises obtained in a fraudulent manner, by John Blackledge Emms, from said Samuel Robinson." This Council cannot here omit observing in addition to the reason already given against the Legislature's exercising judicial powers, and reversing judgments, that the practice of legislating for individuals, and for particular cases, is much too frequent. If a subject feels himself aggrieved, and thinks the law incompetent to give him redress, he immediately applies to the Assembly; and too often, laws are suddenly passed upon such application, to relieve in particular cases, which introduce confusion into the general system, or are afterwards discovered to be wholly unnecessary. The act last mentioned (admitting the Legislature to be a proper court for determining whether a deed was fraudulently procured) was entirely needless;—the supreme court, possessing the powers both of law and equity, being able to give proper relief in this and all other cases of fraud. When a person obtains a property, which the law of the land at the time of acquiring it, esteems a legal and equitable estate, if he is divested of it by a sovereign act of power, he has a right to complain of the injury; and all men of interest have a right, and it is their duty, to be alarmed

at the precedent: if this was not the case, Colonel Robinson ought not to have applied to the Assembly, or they to have interfered.

That part of the act passed in the last session of the Legislature, for erecting the new county of Addison, which authorizes the Governor and his Council to appoint county officers therein, for the time being, is esteemed by this Board to be an unnecessary violation of the XXVIIth section of the Frame of Government. We are unable to imagine the particular circumstances of this part of the commonwealth to have been such, as to require adopting so extraordinary a measure, for any other purpose than to give a lead at some future county election.

In our enquiries whether "the public taxes have been justly laid and collected in all parts of this commonwealth; we must offer it as our opinion, that neither has been fully the case. With regard to the equal collection of them, so many occurrences have intervened, known to the freemen at large, that the executive part of government does not appear greatly deserving of censure for their remissness in this respect; but in apportioning the taxes, this Council does not believe full justice has been done: all our towns are new and a part of the most populous ones still uncultivated;—tradesmen of all kinds, and men of genius, are every where much wanted:—it must not certainly be therefore, as "good guardians of the people," that *faculties are rated*, and *unimproved real property*, and *articles of luxury*, *left without assessment*. In the opinion of this Council, visi-

ble property, in proportion to its real value, is the only fit subject of taxation (except the Legislature shall find it expedient to impose a small tax on polls, not minors, for personal protection); and every deviation from this rule, whether to exculpate one class of men, or to harrass another, is an error in government, and ought to be exploded in our future system of taxation.

One branch of the duty assigned this Council is to enquire "in what manner the public monies have been disposed of." In discharging this part of the trust reposed in us, we cannot omit mentioning the dissipation of a considerable part of the public lands in this State, at so early a period that settlements could not be made, before the conclusion of the war; and at a time when actual surveys could not be performed: by which means an ample foundation is laid for the confusion proceeding from interfering grants — a door open for a variety of lawsuits, and applications to the Legislature to procure compensation for lands which the grantees are unable to hold; and the public is deprived of a fund, which, if rightly managed, would probably defray the ordinary expenses of government. The ungranted and confiscated lands seem to have been a boon conferred by Providence, for the support of our republic in its infancy, while its subjects were unable to pay taxes; yet the first septenary has seen the whole, or nearly the whole of them, squandered; and the inhabitants will have reason to think themselves peculiarly fortunate, if they yet escape paying considerable sums on account of them. How far

the peculiar difficulties the State has been obliged to struggle through, ought to excuse this lavish disposition of the public property, must be decided by you, to whom all officers are mediately, or immediately, accountable for their conduct.

This Council is not insensible that the freemen look to this Board for information, with respect to the confiscation and sale of the estates of persons who joined the enemy; and are unhappy, that, after obtaining all the light in our power, we think it most prudent to refer them to such report as the auditors shall make on this subject. And we are also unhappy, that, being destitute of a complete state of the public accounts from the auditors, (which we have repeatedly requested of them,) it is out of our power to make further enquiries in what manner the public monies have been disposed of. Nor ought this Council here to omit noticing that the General Assemblies, previous to February, 1784, are, in the idea of this Council, highly censurable for omitting to enact laws adequate to compel the liquidation of the public accounts: and that the Council are not free from blame for the appointment, and continuance of persons in office of great public trust, who did not keep regular books: by which means (we conclude, from the information of those auditors who have taken an active part in the business) several public accounts of a very important nature, can never be properly adjusted; and the *defaulters of unaccounted thousands* will probably reserve them for their families.

We have now, in an imperfect manner, finished

the important and invidious task allotted this Council — censuring the proceedings of the supreme legislative and executive branches of government, composed of gentlemen of the best characters, and greatest influence, in the commonwealth. A principle of duty has led us to speak our sentiments with a freedom, which, we are not insensible, will be disagreeable to many: but as we have been actuated solely by a desire of contributing our mite to the honor and felicity of the community, and are conscious of no sinister or personal motives in our proceedings, we cheerfully submit our opinion to your candid consideration; and if we are so unhappy as materially to differ in sentiment from that respectable body, the freemen of the State of Vermont, we must console ourselves with the pleasure of having meant well, and that it is the lot of humanity to err.

By order of the Council of Censors,

INCREASE MOSELEY, *President.*

Bennington, 14th February, 1786.

I insert the above address to the people, as it contains a history of our legislation, and will be interesting to the reader. Some of the proposed amendments, however, require particular attention. The amendment reducing the number of representatives to fifty, to be apportioned to the several counties according to the population, was rejected by the Convention, as all similar

ereigns, and propositions have been in the other New England States.*

Some other amendments which were adopted will be noticed in the next chapter.

CHAPTER VIII.

Amendment of the 4th section in the Bill of Rights, and of the 16th section in the Frame of Government.—The Assembly denied the right of the Council to originate bills.—They pass suspended bills without sending them to the Governor and Council.—Vermont acceded to the Union.—Council of Censors elected at the end of the second Septenary.—They proposed amendments and called a Convention.—Resignation and death of Gov. Chittenden.

Among the amendments which were adopted by the Convention, was the addition of the following section to the Constitution: "The legislative, executive, and judiciary departments shall be kept separate and distinct, so that neither exercise the powers properly belonging to the other." But, it seems, the Council has not drawn a very clear line of distinction between legislative and judiciary powers, for they say, in their address to the people, "It is the opinion of this Council that the General Assembly, in all cases where they have vacated judgments, re-

*See Appendix, No. 3.

covered in due course of law, except when the particular circumstances of the case evidently made it necessary to grant a new trial, have exercised a power not delegated or intended to be delegated to them by the Constitution." This served to continue the practice of granting new trials by the Legislature, and they exercised the power for a number of years.

But as the people gradually obtained a more correct knowledge of the principles of the government, the Constitution was raised to the rank of the Supreme law of the State, and being so regarded by the Legislature, our legislation was greatly improved, and the practice of granting new trials was abandoned.

When the Council came to the 4th section in the Bill of Rights, they amended it by inserting the words "by their legal representatives," making it read as follows: "That the people, by their legal representatives, have the sole, exclusive, and inherent right of governing and regulating the internal policy of the same."

The rights, the sovereign rights of the people were often repeated in the Constitution, and the Council observed that many of the people were disposed to consider themselves as individual sov-

to protect themselves in the enjoyment of their rights, without recourse to the laws; and they made the amendment to remind them that the the people had exercised their sovereignty in forming their Constitution of civil government, by which they had made themselves, one and all, subjects of that government, and that they must continue subject to it, until they should again call their primitive sovereignty into exercise, and alter or abolish the Constitution.

Were the same subject now before a Council, they would address themselves to the Legislature, and remind them that they were vested with the whole legislative power of the State; that they cannot delegate their power, nor surrender it to the people who conferred it; that the people had, by the Constitution which they had adopted, entered into a solemn compact by which each individual was laid under a legal and moral obligation to obey all the laws which should be passed by the Legislature, which they had constituted, but no one was under any obligation to obey any law which should be passed by the people as in a pure democracy. When we formed a representative democracy, we considered we had made an improvement upon all civil governments which had

ever been instituted. A pure democracy had ever been destitute of every property of a good government. The laws were ever in a ruinous state of fluctuation, and it utterly failed of protecting the people in the enjoyment of their rights. By instituting a representative democracy, we hoped to avoid all these evils, but as our government is founded on the democratic principle, unchecked by any other, that principle is gaining strength, and the tendency of the government is towards a pure democracy. Both political parties have long since discovered this, and it is amusing to witness their struggles in the race for popularity —both make use of democracy as a condiment, with which they season every political dish, and *democratic* is considered a necessary prefix to every party name. The whigs call themselves democratic whigs, and the republicans call themselves democratic republicans. The next step will be, that one of the parties, no one can tell which, will attempt to shoot ahead of their opponents by assuming the name of democratic democrats.

Whether this tendency of our government toward a pure democracy will be for evil or for good, we shall be taught by experience. If it proves injurious, as we have reason to fear it may,

the experience and intelligence of the people will induce them to retrace their steps, and the government will be improved and perpetuated. It is the natural government of civilized man, and as nature ever makes efforts to cure all diseases in the human body, she will be sure to make efforts to heal all wounds in the body politic; and she will effect a cure, if not prevented by quackery, as she often is, when making efforts to cure diseases in the human body.

The Convention of 1786 made but one other amendment that deserves particular attention. The section amended is the 16th section in the Constitution, as published in the revised laws, and is in the following words:

"To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all bills which originate in the Assembly, shall be laid before the Governor and Council, for their revision, and concurrence or proposals of amendment; who shall return the same to the Assembly, with their proposals of amendment (if any) in writing; and if the same are not agreed to by the Assembly, it shall be in the power of the Governor and Council to suspend the passing of such bills until the next session of the Legislature. Provided, that if the Governor

and Council shall neglect or refuse to return any such bill to the Assembly, with written proposals of amendment, within five days, or before the rising of the Legislature, the same shall become a law."

This amendment was highly important, as it conferred powers upon the Council which rendered them nearly equal to a co-ordinate branch of the legislature, and as a violation of this article by the House of Representatives prepared the public mind for constituting a Senate.

The reader has seen that during the first septenary bills originated as well in the Council as in the Assembly, and that in the year 1784 an act was passed directing the mode of passing laws, including the mode of proceeding with bills originating in the Council, and the clause in the amended section "all bills which originate in the Assembly," clearly implies that they might also originate in the Council.

They did not point out the mode of proceeding with bills originating in the Council, for they considered that already settled by practice, and the laws then in force. In the year 1787, there was a general revision of the laws, and the statute of 1784, directing the mode of passing laws was re-

enacted, and the same practice was continued during the septenary, and until the revision of the laws in 1797, when the statute directing the mode of passing laws was again re-enacted.

And every bill which had been suspended by the Governor and Council, was treated by the Assembly as a new bill, and if again passed at the next session by the House, was sent to the Governor and Council as other bills.

It is seen that by the provisions of the section, the Governor and Council could in no case suspend the passing of a bill until they had proposed amendments, and they had been non-concurred in by the House. This led to some singular amendments in cases where the Council had no objections to the details of the bill, but were opposed to the passage of any bill on the subject. To remedy this inconvenience, the two Houses, at their session in October, 1801, concurred in passing an act, providing "that when the Governor and Council should not," within five days concur in passing any bill received from the House of Representatives, such bill may be sent back to the House, together with the reasons why the Governor and Council did not concur, whereupon the House of Representatives shall act upon such bill

in the same manner as though it had been read but once in the House, and if, upon reconsideration of such bill, the House of Representatives shall pass the same, it shall be returned to the Governor and Council for their revision and concurrence, or proposals of amendment, and the bill shall be considered in the same stage as it was when first sent to the Governor and Council." The concurrence of the two Houses in passing the several acts directing the mode of passing laws, especially the last, clearly proves that they acted cordially together until long after the external pressure had been removed by a settlement of the controversy with New York, and after political parties were well organized. This only proves that time is required to break up old habits, or we might rather say, for old habits to pass away, with the generation which they had influenced, for there is never any great change in the habits of the same generation. But when a new generation began to appear in the Assembly, a change became visible, and the defects in the Constitution became more and more apparent. And as the political parties found it to be for their interest to promote young men, active and full of zeal, they sent young men to the Assembly, and the

House was soon filled with a new generation, who, instead of being disposed to act in concert with the Council, began to encroach on their powers. It has ever been so. The most numerous branch of the Legislature consider themselves as the people collected in a body, and are disposed to exercise all the power which such a body would in fact possess. Besides, it is the business of legislators, not to enquire what the law is, to seek for a rule by which their conduct is to be governed, but to say what the law shall be, and they naturally acquire a habit and temper of mind adverse to all control or limitations of power.

The first encroachment on the powers of the Council, by the House of Representatives, was a denial of their right to originate bills, and a refusal to receive and act upon such bills. But the House of Representatives did not assume the whole legislative power of the State until the year 1826, when they passed a suspended bill, and recorded it as a law, without sending it to the Governor and Council. Then the check upon the House of Representatives, provided by the 16th section, proved wholly insufficient.

The first Council of Censors proposed several important amendments, by which they proposed

to reduce the number of Representatives in the Assembly to fifty, to be elected by county conventions or by districts, and they proposed to elect the members of the Council, by counties. Now we do that Council of Censors great injustice, if we say they were unwise in considering that the provision of the 16th section would be a sufficient check upon the House of Representatives, for if the number of representatives had been reduced to fifty, and the members of the Council had been elected by counties as provided by the the Council of Censors, the House of Representatives might have encroached on the powers of the Council. The members of the Council, being elected by general ticket, knew that their re-election depended on the good will of the members of the House—they were thus responsible to the members of the House instead of the people. It would not therefore be expected that the Council would prove a very powerful check upon the House of Representatives. Accordingly, as soon as the habit of acting in concert had passed away, the Council were very cautious in proposing amendments to any bill from the House, and they were naturally inclined to recede, in case their amendments were non-concurred in by the House.

This course naturally lessened the respectability and influence of the Council, especially with the House of Representatives, and hastened the time when the Council should be divested of that power which they were afraid to exercise.

The reader has noticed the very different operation of the Constitutions of Vermont and Pennsylvania, although they were very nearly the same. This reminds us of the trite observation, that no Constitution can be so framed as to be equally fitted to promote the happiness of every people, and we have seen, by the operation of the Constitution of Vermont, that such may be the state of society, condition and habits of a people, that they may enjoy the blessings of a good government under a Constitution in any form, provided it be founded on the sovereignty of the people. Pennsylvania was a wealthy state at the time they formed their Constitution, and they had under their colonial government many lucrative offices, and, of course, were divided into political parties. These offices were so eagerly sought, that party spirit had taken the place of patriotism, and produced a division in the Convention which adopted the Constitution, and prevented an amendment of it at the end of the first septenary. But before the

end of the second septenary, such had been the violence of the Legislature, consisting of one numerous Assembly without any check upon it, and so much corruption had been witnessed in the exercise of the power of appointment, by a numerous executive, that the people become alarmed, and both parties united in framing a new Constitution, with only one dissentient.

Gov. Chittenden was again re-elected by the people, and continued in office until the year 1786, when there was no choice of Governor by the people. Gov. Chittenden had a plurality of votes, but the Legislature elected Moses Robinson for Governor.

The friends of Gov. Chittenden were strongly attached to him, and being highly exasperated, accused the Legislature of disregarding the voice of the people, and turning out an old and faithful public servant against their wishes, and they succeeded in producing a high degree of excitement among the people. The consequence was, that the next year Gov. Chittenden was elected by a far greater majority, than that of preceding years.

The controversy with New York having been adjusted, the Legislature called a Convention to decide whether Vermont would accede to the Un-

ion. The Convention was holden at Bennington, on the 6th of January, 1791. Gov. Chittenden was President of the Convention, and threw the whole weight of his influence into the federal scale. After a session of four days, the Convention resolved, yeas 105, nays 2, that application be made to Congress for the admission of Vermont into the Federal Union. And on the 18th day of Jan. 1791, the Legislature, in order to carry into effect the foregoing resolution, appointed Nathaniel Chipman and Lewis R. Morris to attend Congress, and negotiate the admission of Vermont into the Federal Union, and on the 4th day of March, 1791, Vermont became one of the United States of America.

At the expiration of the second septenary, the following persons were elected members of the Council of Censors: Daniel Buck, Orlando Bridgman, Benjamin Burt, Elijah Dewey, Jonas Galusha, Anthony Haswell, Roswell Hopkins, Samuel Knight, Beriah Loomis, Samuel Mattocks, Elijah Paine, Isaac Tichenor and Jno. White.

At the close of their deliberations, they made the following address to the people:

In Council of Censors, Nov. 30, 1792.

To the Freemen of the State of Vermont:

We have now the honor to submit to your consideration such amendments in the Constitution of this State, as have appeared to us the most advisable.

Sensible that experience alone can evince the utility of political institutions, we have directed our attention rather to remedy the few inconveniences which have been found in the present Constitution, than to introduce theoretical improvements, the issue of which might be doubtful, and perhaps might have a tendency, in the end, to mar that political happiness which we have already attained.

One inconvenience we conceive to be, the vesting of all legislative power in a single and numerous body. Their numbers, which are necessary, in order fully to comprehend all the national interests, passions, manners and sentiments to which laws ought to be adapted, tend to encumber discussion, and subject such legislatures, frequently, to hasty and crude determinations. This we have apprehended to be a principal reason, why so many amendments, explanations, and alterations, have been constantly found necessary, in our laws. To remedy these inconveniences, by introducing a more deliberate discussion, in the proceedings of the legislature, we have proposed the addition of a Senate, who shall have distinct power, and an equal voice, in all affairs of legislation. To facilitate their deliberations, they are to be less numerous than the House of Representatives: we have taken care, nevertheless, that the Senate shall be, in the fullest sense, representatives of

the people, and amenable to them, for their conduct, as much as the members of the other branch; and have so provided for their election as to give a different combination, and more collective view, of the interests which they represent:—this, we conceive, will introduce more deliberation into the business of legislation, and give to each branch an opportunity of correcting many errors, which may otherwise escape attention.

We have thought it inconsistent with the principles of a free government, that the executive should have a negative on the proceedings of the legislature; nevertheless, as the executive have an opportunity of observing all difficulties, which arise in the execution of laws, and are the centre of information, upon that subject, we judge it necessary, that the legislature should be availed of such information:—we therefore propose, that all acts, before they pass into laws, shall be laid before the executive for revision: they are, however, to make no leading propositions, but simply to state their objections, if any they find, with their reasons, in writing, to the legislature; who still are to have the sole power of passing laws.

The other amendments are such, as, we are induced to believe, will better explain the several articles, and prevent the passing *ex post facto laws*, and make the practice, in the different branches of government, more uniform.

In examining the proceedings of the legislative and executive departments of this government, during the last septenary, we are happy to find no

proceedings which we judge unconstitutional or deserving of censure.

The several taxes, in our opinion, have been justly laid; except where the legislature have doomed, in a few instances, towns, more than the amount of their lists, as returned by the listers; which has thrown an unequal burden on the collectors of those towns.—The public monies, we find, have been expended with economy; and the several taxes have been generally collected.

On a retrospective view, it gives us much pleasure to observe the many valuable improvements which have been made in this government, since the first formation, and the mild and equal energy, which, by such improvements, has been added to the administration, and the increasing happiness of the citizens, in the security of their rights.

It has been our anxious endeavor, to add something to those improvements.—Our arrangements, on this head, we now submit, to the consideration of an enlightened community; to judge of their tendency, whether they are calculated, in whole or in part, to add any thing to the improvement of our present system, to give a further security to the rights, and an increase of happiness to the people.

By order of the Council,

SAMUEL KNIGHT, *President.*

Attest, Ros. Hopkins, *Sec.*

The improvements of the Constitution, referred to by the Council in their address to the people,

consisted of such amendments as to make an entirely new Frame of Government, and having incorporated the amendments, the revised Constitution was published for the consideration of the people. It would occupy too much space to give a copy of the revised Constitution, I therefore give only the following abstract of those provisions which materially varied it from the Constitution then in force.

The Council proposed that the supreme legislative power should be vested in a Senate and House of Representatives: — that, for the first septenary, the Senate should be composed of members from, and to be elected by, the several counties, as follows, viz.:—Bennington and Orange counties, each, two; Windham, Windsor, and Rutland, each, three; Addison and Chittenden, each, one, and every new county, which might be thereafter organized, one; and that, after the first septenary, each county might elect one senator for every eight thousand souls in such county; and that any county containing a less number, might elect one. The votes for senators were to be taken on the first Tuesday in September, annually, and returned to, and canvassed by, the judges of the county court.—That the judges of the county courts shall be ineligible as senators, and that senators should be incapable of holding any office in the judiciary department.

The House of Representatives, it was proposed,

should consist of one member from each town, containing, at the time of election, forty families; and that the freemen of any two or more towns that might, together, contain forty families or upwards, might meet, and elect one representative.

The Senate and House of Representatives were to be styled — The Legislature of the State of Vermont.

To the end that laws might be more maturely considered, &c., it was provided that every bill, having passed the Senate and House of Representatives, should be presented to the Governor and Council for their approbation; if not approved, to be returned, with the objections, in writing, to that House in which it originated; and if, on reconsideration, the bill should pass both Houses, it should become a law, notwithstanding the disapprobation of the Governor and Council.

The supreme executive power was to be vested in the Governor, or, in his absence, the Lieutenant-Governor.

The Governor, or person acting as such, was empowered to commission all officers, and to fill vacancies; and to exercise all the other powers vested in the Governor and Council by the 18th section of the first Constitution; except that of judging in cases of impeachment.

An advisory Council, consisting of four, were to be annually elected by the Senate and House of Representatives, in the same manner as judges of the supreme court were to be elected; who were to meet with the Governor, at every session, "to advise with him in granting pardons, re-

mitting fines, laying embargoes, revising bills," &c. &c.

All commissions were to be signed by the Governor, and attested by the Secretary of State.

Either House of the legislature were authorized to "nominate or elect," by ballot, judges of the supreme court, county courts, and courts of probate, major and brigadier generals, Secretary of State and sheriffs; and, without ballot, to "nominate or elect" justices of the peace; and transmit such nominations to the other House, for their approbation. If the other House should approve, the election was thereby consummated. If they should not approve, they were to make a nomination and transmit it to the House in which the nomination originated; and if both Houses could not thus agree, they should proceed to make the election by joint ballot.

The proposed amendment, depriving all towns containing less than forty families of the right of representation, produced a high degree of excitement in the northern part of the State. The settlement of the four southern counties was very little checked by the Revolutionary war, but we have seen that the scattered settlers in that part of the State were driven from their farms, at the commencement of the war, and no settlements were made in that quarter until the close of the war, in 1783. From this time, the settlements rapidly

increased in that part of the State now comprised in the counties of Addison, Chittenden, Franklin, Grand Isle, Orange, Washington, Caledonia, Essex, Orleans, and Lamoille; and many of the towns were organized, and sent representatives to the legislature; but a great portion of them contained less than forty families. There was at that time such a rush of settlers into that part of the State, that it was then obvious that the obnoxious amendment must soon cease to have any effect, and it is difficult to account for the very narrow view of the subject taken by those who proposed and those who so violently opposed it. Nothing but local interest could have led to so contracted a view of the subject. The Council of Censors was composed of three members from the town of Bennington, and one from Shaftsbury, making four from the county of Bennington, three from the county of Windham, one from the county of Windsor, two from the county of Orange, and one from the counties of Rutland, Addison, and Franklin.

The Convention was holden at Windsor, in June, 1793. When the members convened, it was found that there was a majority from the towns north of the counties of Rutland, and Wind-

sor, and all those, except two, Judge White, from Georgia, and Judge Law, from Colchester, voted against the principal amendments; and yet the members from the four southern counties were so unanimously in favor of them, that after a session of about a week, they were rejected by a very small majority. Some amendments of minor importance were adopted, the 17th, 18th, 19th, and 30th sections were added, and the 26th amended, and the Constitution thus amended was adopted, and is the Constitution contained in Thompson's History of Vermont, and which is, by many, taken to be the first Constitution of the State. Gov. Chittenden was President of the Convention, but he took no part in the debates. It was understood that he was in favor of the proposed amendments, but perceiving that the passions of a majority of the members were so highly excited in opposition that they could not be adopted, he considered it to be his duty to reserve his influence for future occasions, when it might be available in promoting the public good.

He met the legislature at the October session of 1796, for the last time, and delivered the following speech, which, as Mr. Thompson, in his History of Vermont, remarks, is characterised by

simplicity, sound sense, and a paternal regard for the welfare of the people :

" *Gentlemen of the Council and Assembly :*

So well known to you are the manifold favors and blessings, bestowed on us as a people, by the Great Ruler of the universe, that it would be unnecessary for me to recapitulate them. I would, therefore, only observe, that, but a few years since, we were without constitution, law, or government ;—in a state of anarchy and confusion ; at war with a potent foreign power ; opposed by a powerful neighboring state ; discountenanced by the Congress ; distressed by internal dissensions ; —all our landed property in imminent danger, and without the means of defence.

Now your eyes behold the happy day, when we are in the full and uninterrupted enjoyment of a well regulated government, suited to the situation and genius of the people, acknowledged by all the powers of the earth, supported by the Congress,—at peace with our sister states, among ourselves, and with the world.

From whence did these great blessings come ? From God. Are they not worth enjoying ? They surely are. Does it not become us as a people to improve them, that we may have reason to hope that they may be continued to us and transmitted to posterity ? It certainly does.

What are the most likely means, to be taken by us as a people, to obtain this great end ?—To be a faithful, virtuous and industrious and moral peo-

ple. Does it not become us as a legislature, to take every method in our power, to encourage virtue, industry, morality, religion and learning? — I think it does. Is there any better method, than by our own example; and having a sacred regard to virtue, industry, integrity and morality, in all our appointments of executive and judicial officers?

This is the day we have appointed to nominate all our subordinate executive and judicial officers, throughout the state, for the present year. The people, by free suffrages, have given us the power, and in us they have placed their confidence; —and to God, to them, and to our own consciences we are answerable. Suffer me then as a father, as a friend, and as a lover of this people, and as one, whose voice cannot be much longer heard here, to instruct you, in all your appointments, to have regard to none but those who maintain a good moral character—men of integrity, and distinguished for wisdom and abilities; in doing this, you will encourage virtue, which is the glory of a nation, and discountenance and discourage vice and profaneness, which are a reproach to any people."

Soon after this, his health began to decline, and the next season, being satisfied that he should never again be able to perform any public duties, he resigned the office of Governor, and died on the 25th of August, 1797, in the 69th year of his age. Thus a kind Providence prolonged his life,

until he had the satisfaction to see his beloved State rise from a wilderness, sparsely settled by the Green Mountain Boys, contending for their independence, as a people, into a highly cultivated State, holding a high rank among her sister States of the Union. What a rich and appropriate reward for all his noble and patriotic exertions! And he had the satisfaction of knowing that he had toiled for a grateful people, who would ever hold him in affectionate remembrance, as the father of the State.

CHAPTER IX.

Origin of Civil Government.—The powers of Government necessarily vested in individuals, until the people are capable of Self-Government.—The people of the British American Colonies organized the first Civil Government founded on the sovereignty of the people, the natural government of civilized man, and it will be extended through the world.

Having brought down the history of the Constitution from its first formation to the close of Gov. Chittenden's administration, I shall close with some observations on the past, and some conjectures as to the future. I have said that the government founded on the sovereignty of the

people is the natural government of man. It may be asked how can this be, since such Government was never formed until these latter days, when the people of the British American Colonies were compelled to form such governments.

A single glance at the origin and progress of civil government will furnish an answer to this question, and I can but glance at it merely to call the reader's attention to the subject.

In the origin of civil society, more or less individuals associated and acted together in the management of their common concerns, and certain individuals took the lead, as certain school boys take the lead in all their juvenile sports, and these individuals acquired an influence which gave them command in all their enterprises. In progress of time, a right to command was conceded, and it became the duty of all to obey. At length this right to command descended to the heir—hence the hereditary monarchies of Europe.

In the same manner was the right to govern vested in a number of individuals, forming an aristocracy.

The people of Europe continued under these governments, until they lost all ideas of their natural rights, and were contented in the enjoyment

of such privileges as their sovereigns were graciously pleased to grant. But certain causes operated to ameliorate the condition of the people of England. They were restless under the oppression of the King and Nobles, and struggled to obtain their freedom. And they were successful in elevating the democracy to a level with the privileged order, the King and Nobles; and finally establishing the people in the House of Commons as a co-ordinate branch of the Legislature, constituting a free Monarchy. Under this government, the people of England enjoyed political liberty—the right of suffrage so far as was necessary to secure them in the enjoyment of their civil rights; for in no government were the people more perfectly secured in the enjoyment of them, and they boasted, as in that age they had reason to boast, of their Constitutional rights as Englishmen.

And those of them who settled the North American Colonies brought with them Constitutional rights as British subjects, and in some of the Colonies they enjoyed the right of self-government, with very little restriction, and they enjoyed political liberty in the election of all their public functionaries. This was the case in Connect-

icut ; consequently their government was undisturbed by the Revolution, and they continued under their Colonial organization, without any written Constitution until the year 1818.

In all the other Colonies, except Rhode Island, the governments were overthrown by the Revolution, and the people were left destitute of any political organization. Thus situated, the people were compelled to form governments for themselves, without any precedent, without any model from the past, and as there were no different orders in the community, but the whole people were on a level, possessed of equal rights, they formed their governments on the democratic principle of the sovereignty of the people.

This was the first opportunity which a civilized people ever had to form a government for themselves, and as civilization is a state to which man naturally arrives by the exercise of those faculties with which his Maker endowed him for his improvement, it is properly termed his natural state, and the government which he establishes, founded on his natural rights, may be properly termed the natural government of man. The time had now arrived, in the order of Providence, when a people became capable of self-government, and

they were placed in such circumstances that they were under the necessity of trying the experiment of a government founded on the sovereignty of the people.

Now it is clear that no people could be capable of self-government, until advanced to a high degree of civilization, and it is as clear that they never could make any advances towards a state of civilization, without some kind of organized civil government. How manifest, then, is the wisdom of the Creator in so constituting man, that when societies should be formed and civil government become necessary, the people would submit to the government of individuals, until they should become capable of self-government. In this view of the subject, who can say that the divine right of Kings was as useless as it was impious? So long as the people were incapable of governing themselves, the powers of government were of necesity vested in individuals, who exercised them as a matter of right, and very naturally this right grew into a divine right.

To those living under a government thus constituted, by whose authority alone they had been protected against lawless violence, a government of the people by themselves would appear like an

organized anarchy. And though the Colonists had, in a good degree, enjoyed the right of self-government, yet, as they were protected in the enjoyment of their civil rights by the authority of the King, and justice was administered in his name, their views of civil government, which had been fixed by habit, were not at once entirely changed, and many entertained doubts and fears in relation to the successful operation of a government by the people. But during the war of independence, little attention was paid to the operation of the State Constitutions, nor was much regard paid to them by the State Legislatures. The people were so united in the defence of the country, that they could have acted cordially together without any organized government, as did the people of the New Hampshire Grants during their contest with New York.

But after the close of the war, after the external pressure had been removed, the people manifested a different spirit. They had persuaded themselves that they had been cruelly oppressed by the tyranny of the British government, and that if they could achieve their independence, their condition would be entirely changed, that, enjoying the largest liberty under their free gov-

ernments, they should live in a state of ease and happiness, to which they had ever been strangers. But during the seven years of war, a great portion of the people had contracted habits of idleness and dissipation, which inevitably lead to poverty and distress, under any government. In addition to this, to defray the expenses of the war, the taxes were necessarily higher than they had ever paid while under the British government.

By this disappointment, the minds of the people were soured, attributing all their distress to the new government, and not having obtained a clear understanding of the principles on which they rested, felt that they had a right to rise in opposition to them. And in this State, and some others, great numbers were in arms, to overthrow the governments which they had instituted. In this state of things, the sober and reflecting part of community were alarmed, their doubts and their fears in relation to the successful operation of the new governments were revived and increased, and the following lines from McFingal were constantly quoted, as containing a prophecy which was speedily to be fulfilled to the letter:—

"What wild confusion hence must ensue,
Though common danger now cements you;
So some wrecked vessel, all in shatters,
Is held up by surrounding waters,
But stranded when the pressure ceases
Falls by its rottenness to pieces,
And fall it must, if war be ended,
For you'll ne'er have sense enough to mend it."

But McFingal proved to be a false prophet. These insurrections took place in 1786–7, and the State governments had sufficient strength to overcome all opposition, and restore peace and good order. It is true that the insurrections in the State governments created distressing fears that they could not be sustained, without the aid of a National Government, which brought the States to agree in establishing such a government; and it is also true that the several states could never have been in a prosperous condition, so long as they continued sovereign and independent states, even if they could have lived in peace. But it is not true that State governments would have failed by reason of the weakness of a government founded on the sovereignty of the people, for they were sustained under all the adverse circumstances above named, and which could never again occur in all their force. The governments were new and the principles on which they rested were not

fully understood, nor had their authority become venerable by time, nor had the people acquired a habit of submission to their authority, or a knowledge of their strength. Add to this, the distressed condition of the people, rendered more intolerable by their disappointed expectations, and who can fail to perceive and acknowledge the peculiar strength of a government founded on the sovereignty of the people. If there be at any time a dissatisfaction among the people with the administration, their efforts will be directed not against the authority of the government, but to a change in the public functionaries, and if they succeed, they are satisfied with a change of measures—if they fail, they find a majority of the people against them, and an attempt to obtain redress by force would be hopeless. Accordingly, we find that, since the insurrections of 1786–7, there has been no insurrection against the State government, except in Rhode Island; but that state did not belong to the family of American states—her government was of European origin, and the people never had an opportunity to institute a government for themselves, for a great portion of them were deprived of all their political rights. An insurrection in that state was therefore natural,

and in the outset justifiable. In all the other states, the people have become so habitually submissive to the government, that they feel little legal restraint, and would scarcely be sensible that they live under any government, were they not occasionally called on to vote and pay moderate taxes.

There was one insurrection against the National government, while in its infancy, and before its strength was ascertained, which was soon suppressed. If there be in future any opposition to that government, it will be by those states who consider themselves sovereign and independent, as they were under the confederation. If there shall ever be a majority of the states maddened into this strange delusion, the remarks of McFingal in the following lines will be as applicable to the Congress under the constitution, as they were to the old Congress :—

"Nor can you boast, this present hour,
The shadow or the form of power;
For what's your Congress, or its end?
A power to advise and recommend,
To call forth troops, adjust your quotas,
And yet no soul is bound to notice."

Both the state and national governments are founded on the sovereignty of the people. The

whole people of the United States, have vested in the national government the sole power of regulating all our national concerns, leaving with the several states the regulation of their domestic concerns, and we may then say that it has been proved, by an experience of more than half a century, that a civil government, founded on the sovereignty of the people, is a stronger government, and is better calculated to secure the peace and promote the happiness of the people, than any other civil government which has been established, either by compact, by custom, or by force. But it must be observed, that the people who established and supported this government were a highly civilized, intelligent and Christian people, and it must be particularly noticed, that a vast majority of them were possessed of property, and had an interest in its protection.

But although the experiment does not prove it, have we not reason to hope that a free government may be established and supported by a people far less favored in these respects, than the people of the United States? Our example has made a deep impression on the people of Europe, and they are struggling to obtain their freedom. And can we believe that it will be so ordered by Providence,

that this struggle will only drench Europe in blood, and leave the people in slavery? May we not rather believe that the blessings of free government will not be confined to North America, and Western Africa, but that civilization and free government will accompany the Christian religion in its extension over the whole earth.

APPENDIX.

NO. I.

Note to page 118.—In the MS. prepared for the press, the following was inserted, between lines 13 and 14 from the top: "Gov. Gerry, who was a member of the Convention which formed the Constitution of the United States, and was a distinguished republican through life, when the Convention were endeavoring to fix on the best form of government, remarked—'Perhaps a limited monarchy would be the best form of government, if we had materials for a House of Lords.'"—The author inserted this from memory, having read it some years since, in a volume containing the journals of the Convention which formed the Constitution of the United States, with notes of the several debates in the Convention, taken by Chief Justice Yates, who was one of the delegates from the State of New York; and, not being able to find these remarks in any published work, he erased them from the MS., from a fear that he had stated them incorrectly. The following has since been found, in the first volume of Elliot's Debates on the Federal Constitution, page 454: "Gov. Gerry remarked—perhaps a limited monarchy would be the best government, if we could organize it, by creating a House of Peers, but this cannot be done."

NO. II.

LETTER FROM GOV. CHITTENDEN TO GEN. WASHINGTON, UPON THE COURSE AND POLICY OF VERMONT IN THE REVOLUTIONARY WAR.

Arlington, Nov. 14, 1781.

SIR,—The peculiar situation and circumstances with which this state, for several years last past, has been attended, induces me to address your Excellency, on a subject which nearly concerns her interests, and may have its influence on the common cause of the states of America. Placing the highest confidence in your Excellency's patriotism in the cause of liberty, and disposition to do right and justice in every part of America, (who have by arms supported their rights against the lawless power of Great Britain,) I herein transmit the measures by which this state has conducted her policy, for the security of its frontiers; and, as the design and end of it was set on foot, and has ever since been prosecuted on an honorable principle, (as the consequences will fully evince,) I do it with full confidence that your Excellency will not improve it to the disadvantage of this truly patriotic, suffering state; although the substance has been communicated by Capt. Ezra Hicock, employed by Major General Lincoln, by your Excellency's particular direction, and who arrived here with the resolutions of congress of the seventh day of August last, which appeared in some measure favorable to this state. I then disclosed to him the measures this state had adopted for her security, which I make no doubt has by him been delivered your Excellency. And though I do not hesitate that you are well satisfied of the real attachment of the government of this state to the common cause, I esteem it, nevertheless, my duty to this state, and the common cause

at large, to lay before your Excellency, in writing, the heretofore critical situation of this state, and the management of its policy, that it may operate in your Excellency's mind, as a barrier against clamorous aspersions of its numerous (and, in many instances, potent) adversaries. It is the misfortune of this state to join on the frontier of Quebec, and the waters of the Lake Champlain, which affords an easy passage for the enemy to make a descent with a formidable army on its frontiers, and into the neighborhood of the several states of New York, New Hampshire, and Massachusetts, who have severally laid claims, in part or in whole, to this state, and who have used every art which they could devise to divide her citizens, to set congress against her, and, finally, to overturn the government, and share its territory among them. The repeated applications of this state to the congress of the United States, to be admitted into the federal union with them, upon the liberal principles of paying a just proportion of the expenses of the war with Great Britain, have been rejected, and resolutions passed, *ex parte*, tending to create schisms in state, and thereby embarrass its efforts in raising men and money for the defence of her frontiers, and discountenancing the very existence of the state. Every article belonging to the United States, even the pickaxes and spades, has been by the commissioners ordered out of this state, at a time when she was erecting a line of forts on her frontiers. At the same time the state of New York evacuated the post of Skeensborough, for the avowed purpose of exposing this state to the ravages of the common enemy.

The British officers in New York, being acquainted with the public disputes between this and the claiming states, and and between congress and this state, made overtures to Gen. Allen, in a letter, projecting that Vermont should be a colony

under the crown of Great Britain, endeavoring, at the same time, to draw the people of Vermont into their interest. The same day Gen. Allen received this letter, (which was in August, 1780,) he laid it before me and my council, who, under the critical circumstances of the state, advised that no answer, either oral or written, should be returned, and that the letter be safely deposited till further consideration: to which Gen. Allen consented. A few months after, he received a second letter from the enemy, and same council advised that Gen. Allen should send both letters to congress, (inclosed in a letter under his signature,)which he did, in hopes that congress would admit Vermont into union; but they had not the desired effect.

In the fall of the year 1780, the British made a descent up the Lake Champlain, and captured the forts George and Ann, and appeared in force on the lake. This caused the militia of this state, most generally, to go forth to defend it. Thus the militia were encamped against the enemy near six weeks, when Gen. Allen received a flag from them, with an answer to my letter, dated the preceeding July, to Gen. Haldemand, on the subject of an exchange of prisoners. The flag was delivered to Gen. Allen, from the commanding officer of the enemy, who was then at Crown Point, with proposals for a truce with the state of Vermont, during the negotiating the exchange of prisoners. Gen. Allen sent back a flag of his to the commanding officer of the British, agreeing to the truce, provided he would extend the same to the frontier parts of the state of New York, which was complied with, and a truce took place, which lasted about three weeks. It was chiefly owing to the military prowess of the militia of this state, and the including the state of New York in the truce, that Albany

and Schenectady had not fell a sacrifice to the ambition of the enemy that campaign.

Previous to the retreating of the enemy into winter quarters, Col. Allen and Maj. Fay were commissioned to negotiate the proposed exchange of prisoners. They proceeded so far as to treat with the British commissioners on the subject of their mission, during which time they were interchangeably entertained with politics, which they treated in an affable manner, as I have been told, but no cartel was settled; and the campaign ended without the effusion of blood.

The cabinet council, in the course of the succeeding winter, finding that the enemy in Canada were about seven thousand strong, and that Vermont must needs be their object the ensuing campaign, circular letters were therefore sent from the supreme executive authority of this state to the claiming states before-mentioned, demanding of them to relinquish their claims to this state, and inviting them to join in a solid union and confederation against the common enemy. Letters were also sent to your Excellency and to the states of Connecticut and Rhode Island; any [one] of these letters stated the extreme circumstances of this state, and implored their aid and alliance, giving them withal to understand, that it was out of the power of this state to lay in magazines and support a body of men sufficient to defend this state against the force of the enemy. But to those letters there has been no manner of answer returned.

From all which it appeared that this state was devoted to destruction by the sword of the common enemy. It appeared to be the more unjustifiable that the state of Vermont should be thus forsaken, inasmuch as her citizens struck the first offensive blow against British usurpation by putting the continent in possession of Ticonderoga, and more than two hundred pieces of cannon, with Crown Point, St. John's, and all

Lake Champlain; their exertions in defeating General Carleton in his attempt to raise the siege of St. John's; their assisting in penetrating Canada; their valor in the battle of Hubbardton, Bennington, and the landing near Ticonderoga; assisting in the capture of General Burgoyne, and by being the principal barrier against the power of the enemy in Canada ever since.

That the citizens of this state have, by nature, an equal right to liberty and independency with the citizens of America in general cannot be disputed, and that they have merited it from the United States, by their exertions with them, in bringing about the present glorious revolution, is as evident a truth as any other which respects the acquired right of any community. Generosity, merit and gratitude all conspire in vindicating the independence of Vermont; but notwithstanding the arguments which have been exhibited in sundry pamphlets in favor of Vermont, which have been abundantly satisfactory to the impartial part of mankind, it has been in the power of her external enemies to deprive her of union, confederation, or any equal advantage in defending themselves against the common enemy. The winter being thus spent in fruitless attempts to form alliances, and no advantages were procured in favor of this state, except that Massachusetts withdrew her claim on condition that the United States would concede to the independence of Vermont; but that if they would not, they would have *their* smack at the south end of its territory; still New York and New Hampshire were strenuously opposed to the independence of Vermont, and every stratagem in their power to divide and sub-divide her citizens were exerted, imagining that their influence in congress, and the certain destruction (as they supposed) of the inhabitants of this state by the common enemy, could not fail of finally accomplishing their wishes.

In this juncture of affairs, the cabinet of Vermont projected the extension of their claim of jurisdiction upon the state of New Hampshire and New York, as well to quiet their own internal divisions occasioned by the machinations of those two governments, as to make them experience the evils of intestine broils, and strengthen this state against insult. The legislature accordingly extended their jurisdiction to the eastward of Connecticut River to the old Mason line, and to the westward to Hudson River; but in the articles of union referred the determination of the boundary line of Vermont and the respective claiming states, to the final decision of congress, or such other tribunal as might be mutually agreed upon by the contending governments. These were the principal political movements of the last winter. The last campaign opened with a gloomy aspect to the discerning citizens of this state, being destitute of adequate resources, and without any alliance, and that from its local situation to Canada, obliged to encounter the whole force of that province, or give up its claim to independence and run away.

Vermont being thus drove to desperation by the injustice of those who should have been her friends, was obliged to adopt policy in the room of power; and, on the first day of May last, Colonel Ira Allen was sent to Canada, to further negotiate the business of the exchange of prisoners, who agreed on a time and place, and other particulars relating to the exchange. While he was transacting that business, he was treated with great politeness, and entertained with political matters, which necessity obliged him to humor in that easy manner that might serve the interests of this state in its extreme critical situation, and that its consequences might not be injurious to the United States. The plan succeeded. The frontiers of this state were not invaded, and Lord George

Germain's letter wrought upon congress and procured that from them which the public virtue of this people could not.

In the month of July last, Major Joseph Fay was sent to the British shipping on Lake Champlain, who completed an exchange of a number of prisoners who were delivered at Skeensborough in September last, at which time and place Colonel Ira Allen and Major Fay had a conference with the British commissioners, and no damage had as yet occurred to this or the United States from this quarter. And in the month of October last, the enemy appeared in force at Crown Point and Ticonderoga, but manœuvred out of their expedition, and were returned into winter quarters in Canada with great safety; that it might be fulfilled which was spoken by the prophet:—"I will put my hook in their nose, and turn them back by the way which they came, and they shall not come into this city" (alias Vermont) "saith the Lord."

It remains that I congratulate your Excellency, and participate with you in the joy of capturing the haughty Cornwallis and his army, and assure your Excellency that there are no gentlemen in America who enjoy the glorious victory more than the gentlemen of this state, and him who has the honor to subscribe himself your Excellency's devoted and most obedient, humble servant,

THOMAS CHITTENDEN.

His Excellency General Washington.

NO. III.

REPRESENTATION IN THE SEVERAL STATES.

Below we give the number of members in each house of representatives in the Union, excepting those states which have been recently organized, with the number of inhabitants to each representative in the several states, and the constitutional provisions for reducing the number of representatives and equalizing the representation in some of the New England States.

States.	No. of Reps.	Inhab. to a Rep.
Maine,	151	3,323
New Hampshire,	274	1,037
Vermont,	240	1,216
Massachusetts,	300	2,459
Rhode Island,	69	1,577
Connecticut,	220	1,409
New York,	128	18,976
New Jersey,	42	8,888
Pennsylvania,	100	17,240
Delaware,	21	3,718
Maryland,	76	6,114
Virginia,	134	9,252
North Carolina,	114	6,609
South Carolina,	134	4,435
Georgia,	100	6,914
Alabama,	60	9,845
Mississippi,	100	3,756
Louisiana,	50	7,048
Tennessee,	40	20,730
Kentucky,	100	7,798
Ohio,	72	21,103
Indiana,	36	19,052
Illinois,	36	13,230
Missouri,	100	3,837

By the foregoing, it appears that in the states South and West they have a less number of representatives than in the New England States, and that their representation is perfectly equal. Counties being the only local corporations of any importance, they, in the first place, decided what would be the most suitable number of members in a house of representatives, and then apportioned them to the several counties, according to their population. And as there has been noth-

ing in the way of increasing the number of their representatives, by amending their constitutions, we may reasonably conclude that they have found by experience that their representatives are sufficiently numerous.

And it is worthy of remark, that the oldest of these states, whose constitutions were formed in the infancy of our institutions, have the greatest number of representatives—that the emigrants from them, availing themselves of their experience in their mother states, greatly reduced the number of representatives.

We have seen that in Vermont we have a greater number of representatives than any other state, excepting Massachusetts and New Hampshire, and a greater number than Massachusetts in proportion to the population; and that the state of New York, with a population greater than that of New England, has only 128 representatives, and that the New England states have 1,254.

This increased number of representatives in New England has arisen out of our town corporations, which we so highly prize. Such are the powers of the town corporations, that they lay the most burthensome taxes, and the people feel a deeper interest in the proceedings and finances of the town, than they do in the proceedings of the legistature and the finances of the state. This creates a separate town interest so great, that if a town be not represented by one of her own inhabitants, the people feel that they have no voice in legislation. Hence, the necessity of a town representation, from which we experience two evils of no small magnitude: a house of representatives by far too numerous, and an inequality in the representation. The following provision in the Constitutions of the New England States will show the efforts which have been made by some of them to remove

these evils. In the first Constitution of Massachusetts, adopted in 1786, we find the following system of representation:

"And in order to provide for a representation of the citizens of this Commonwealth, founded on the principles of equality, every corporation containing one hundred and fifty rateable polls may elect one representative; every corporate town, containing three hundred and seventy-five rateable polls, may elect two representatives; every corporate town containing six hundred rateable polls, may elect three representatives; and so proceeding, making two hundred and twenty five rateable polls the mean increasing number for every additional representative. Provided, nevertheless, that each town now incorporated, not having one hundred and fifty rateable polls, may elect one representative; but no place shall be hereafter incorporated with the privilege of electing a representative, unless there be within the same one hundred and fifty rateable polls."

Under the operation of this provision for increasing the number of representatives as the population increased, such additions were made to the number of representatives, that at the time when Maine was separated from Massachusetts, in the year 1819, the House consisted of about seven hundred members, and after the separation of Maine from Massachusetts, the number of representatives was so increased by an increase of the population, that great efforts were made to reduce the number, but a long time elapsed before they could devise any satisfactory mode of doing it. At length they adopted an amendment of the Constitution, making the following provision for a representation of the people:

"The members of the house of representatives shall be apportioned in the following manner: Every town or city containing twelve hundred inhabitants may elect one representative, and twenty-four hundred inhabitants shall be the mean increasing number which shall entitle it to an additional representative. Every town containing less than twelve hundred inhabitants shall be entitled to elect a representative as many times within ten years as the number one hundred and sixty is contained in the number of the inhabitants of such town. Such towns may also elect one representative for the year in

which the valuation of estates within the Commonwealth shall be settled. Any two or more of the several towns may, by consent of a majority of the legal voters present, at a legal meeting in each of said towns, respectively, called for that purpose, and held before the first day of August in the year 1840, and every tenth year thereafter, form themselves into a representative district to continue for the term of ten years. And such district shall have all the rights in regard to representation which would belong to a town containing the same number of inhabitants. The number of inhabitants which shall entitle a town to elect one representative, and the mean increasing number which shall entitle a town or city to elect more than one, and also the number by which the population of towns not entitled to elect a representative every year is to be divided, shall be increased respectively by one tenth of the numbers above mentioned, whenever the population of the Commonwealth shall have increased to seven hundred and seventy thousand, and for every additional increase of seventy thousand inhabitants, the same addition of one tenth shall be made, respectively, to the numbers above mentioned."

Under this very artificial system of representation, the average number of representatives has been three hundred.

In the Constitution of Maine, adopted in the year 1819, is the following provision, limiting the number of representatives and apportioning them to the several counties and towns:

"The house of representatives shall consist of not less than one hundred nor more than two hundred members, to be elected by the qualified electors for one year from the next day preceding the annual meeting of the Legislature."

Provision is then made for taking a census of the inhabitants periodically, and following this are these additional provisions:

"The number of representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population. The number of representatives shall, on said apportionment, be not less than one hundred, nor

more than one hundred and fifty; and whenever the number of representatives shall be two hundred, at the next annual meetings of election which shall thereafter be had, and at every subsequent period of ten years, the people shall give in their votes whether the number of representatives shall be increased or diminished, and if a majority of voters are in favor thereof, it shall be the duty of the next Legislature thereafter to increase or diminish the number by the rule hereinafter prescribed:

Each town having fifteen hundred inhabitants may elect one representative; each town having thirty-seven hundred and fifty may elect two; each town having sixty-seven hundred and fifty may elect three; each town having ten thousand five hundred may elect four; each town having fifteen thousand may elect five; each town having twenty thousand two hundred and fifty may elect six; each town having twenty six thousand two hundred and fifty may elect seven; but no town shall ever be entitled to elect more than seven representatives; and towns and plantations duly organized, not having fifteen hundred inhabitants, shall be classed as conveniently as may be into districts, and so as not to divide towns, and each such district may elect one representative, and when, on this apportionment, the number of representatives shall be two hundred, a different apportionment shall take place, on the above principles, and in case the fifteen hundred shall be too large or too small to apportion all the representatives to any county, it shall be so increased or diminished as to give the number of representatives according to the above rule and proportion, and whenever any town or towns, plantation or plantations, not entitled to elect a representative, shall determine against a classification with any other town or plantation, the legislature may, at each apportionment of representatives, on the application of such town or plantation, authorize it to elect a representative for such portion of time, and such periods, as shall be equal to its portion of representation. And the right of representation so established shall not be altered, until the next general apportionment."

Although, by the Constitution, the legislature were authorized to increase the number of representatives to two hundred, they have added but one representative since the government was organized, making the present number one hundred and fifty one.

When the Colonial government was organized in Connect-

icut, a system of representation was adopted similar to the borough representation in England. The towns were considered as equal, and all were entitled to the same representation, without regard to the size of the town, or the number of inhabitants. It was the town corporation that was represented. And when a town was divided, and a new town incorporated, it was considered that such new town had a right to the same representation as the other towns.

As the towns were originally large, two representatives were allowed to each town. This system of representation was continued until after the close of the Revolutionary War, when an act was passed, providing that no towns thereafter incorporated should be allowed more than one representative. In the year 1818, the first Constitution of Connecticut was adopted, in which is the following provision relating to the representation:

"The house of representatives shall consist of members residing in the towns from which they are elected. The number of representatives from each town shall be the same as at present provided and allowed. In case a new town shall be hereafter incorporated, such town shall be entitled to one representative only, and if such new town shall be made from one or more towns, the town or towns from which the same shall be made, shall be entitled to the same number of representatives as at present allowed, unless the number shall be reduced by the consent of such town or towns."

In the Constitution of Rhode Island is the following system of representation:

"The house of representatives shall never exceed seventy two members, and shall be constituted on the basis of population, always allowing one representative for a fraction exceeding half the rates, but each town or city shall always be entitled to at least one member, and no town or city shall ever have more than one sixth of the whole number of members to which the house is hereby limited. The present ratio shall be one representative to every fifteen hundred and thirty inhabitants. The General Assembly may, after any new census taken by authority of the United States, or of the State, re-apportion the representation, by altering the ratio, but no

town or city shall be divided into districts, for the choice of representatives. The present number of representatives shall be sixty-nine, being one representative to every fifteen hundred and seventy-seven inhabitants."

In the Constitution of New Hampshire, is the following provision for a representation of the people:

"There shall be in the legislature of this state, a representation of the people annually, elected and founded on principles of equality. And in order that such representation may be as equal as circumstances will admit, every town, parish, or place entitled to town privileges, having one hundred and fifty rateable male polls of twenty-one years of age and upwards, may elect one representative; of four hundred and fifty rateable male polls may elect two representatives; and so, proceeding in that proportion, making three hundred such rateable polls the mean ensuing number for any additional representative. Such towns, parishes, or places as have less than one hundred and fifty rateable polls, shall be classed by the General Assembly, for the purpose of choosing a representative, and seasonably notified thereof. And in every class formed for the above mentioned purpose, the first annual meeting shall be held in the towns, parish, or place wherein most of the rateable polls reside, and afterwards in that which has the next highest number, and so on annually by rotation through the several town, parishes, or places forming the district. Whenever any town, parish, or place entitled to town privileges shall not have one hundred and fifty rateable polls, and be so situated as to render the classing thereof with any other town very inconvenient, the General Assembly may, on application of a majority of the voters of such town, parish, or place, issue a warrant for their electing and sending a representative to the General Court."

Under this system, the average number of representatives is two hundred and seventy-four, being one representative to every one thousand and thirty-seven inhabitants.

By the Constitution of Vermont, every organized town, however small the number of inhabitants, is allowed one representative; and no town is entitled to more than one. Under this system of representation, we have seen, the number of representatives is two hundred and forty; and when all the towns in the state shall be organized, the number will be con-

siderably increased. By the small size of our towns, we have a greater number of representatives than they have in Connecticut, although two representatives are allowed to the greater part of the towns. This is owing to the large size of these towns, being originally from ten to twelve miles square.

THE END.

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